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ONTARIO LABOUR RELATIONS BOARD

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APPLICATIONS DISPOSED OF THE ONTARIO LABOUR RELATIONS BOARD

DURING JANUARY 1970

BARGAINING AGENTS CERTIFIED DURING JANUARY

No Vote Conducted

16796-69-R: Retail and Food Employees Local Union 175, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC. (Applicant) v. The Great Atlantic and Pacific Tea Company, Limited (Respondent)

Unit: "All employees of the respondent at its retail stores at Burlington, save and except meat department employees, assistant store manager and head cashier, persons above the rank of assistant store manager and head cashier, persons regularly employed for not more than twenty-four hours per week and students employed in off school hours and during the school vacation period." (10 employees in the unit)

Having regard to the agreement of the parties the Board noted the agreement of the parties that produce department head is included in the bargaining unit.

16797-69-R: Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC. (Applicant) v. The Great Atlantic and Pacific Tea Company, Limited (Respondent)

Unit: "All meat department employees of the respondent at its retail stores at Burlington, save and except persons employed for not more than twenty-four hours per week and students employed in off school hours and during the school vacation period." (7 employees in the Unit)

Having regard to the agreement of the parties the Board noted that the parties have agreed that meat department head is included in the bargaining unit.

16894-69-R: The Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC, (Applicant) v. The Great Atlantic and Pacific Tea Company, Limited (Respondent)

Unit: "All employees of the respondent at its retail stores at Fort Erie, Ontario, save and except assistant store manager, persons above the rank of assistant store manager, persons regularly employed for not more than 24 hours per week and students employed in off school hours and during the school vacation period." (5 employees in the Unit)

HAVING REGARD TO THE AGREEMENT OF THE PARTIES THE BOARD FURTHER NOTED THE AGREEMENT OF THE PARTIES THAT THE PRODUCE DEPARTMENT HEAD AND MEAT DEPARTMENT HEAD ARE INCLUDED IN THE BARGAINING UNIT, AND THAT THE HEAD CASHIER IS EXCLUDED FROM THE BARGAINING UNIT.

16975-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. FIELDING CONSTRUCTION COMPANY, (OWNED AND OPERATED BY PENAGE QUARTZ LIMITED (RESPONDENT) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (INTERVENER)

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT: (A) ITS REPAIR SHOP AND GRAVEL PIT IN WATERS TOWNSHIP IN THE DISTRICT OF SUDBURY AND (B) THE QUARTZ QUARRY OF CARMAN CONSTRUCTION LIMITED IN DIEPPE TOWNSHIP IN THE DISTRICT OF SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE SUDBURY CONSTRUCTION ASSOCIATION MADE ON AUGUST 6, 1969."

UNIT #2: "THAT ALL CONSTRUCTION LABOURERS AT COPPER CLIFF AND ALL EMPLOYEES OF THE RESPONDENT AT COPPER CLIFF, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

UNIT #3: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF McDOUGALL IN THE DISTRICT OF PARRY SOUND, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (DISMISSED)

UNIT #4: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT NON-WORKING FOREMAN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (DISMISSED) (23 EMPLOYEES ARE INVOLVED IN THESE FOUR UNITS)

(SEE INDEXED ENDORSEMENT PAGE 1205)

17011-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. THE CORPORATION OF THE TOWNSHIP OF VALLEY EAST (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF"(13 EMPLOYEES IN THE UNIT)

(SEE INDEXED ENDORSEMENT PAGE 1213)

17013-69-R: Nurses' Association Oshawa General Hospital (Applicant) v. Oshawa General Hospital (Respondent).

Unit #1: "all registered and graduate nurses employed by the respondent at Oshawa engaged in nursing care and in teaching, save and except head nurses and persons above the rank of head nurse and those regularly employed for not more than 24 hours per week." (239 employees in the unit).

Unit #2: "all registered and graduate nurses employed by the respondent at Oshawa engaged in nursing care and in teaching regularly employed for not more than 24 hours per week, save and except head nurses and persons above the rank of head nurse." (179 employees in the unit).

(see indexed endorsement page 1218).

17027-69-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the Town of Kingsville (Respondent).

Unit: "all employees of the respondent, save and except Deputy Clerk-Treasurer, Clerk-Treasurer and persons above the rank of Deputy Clerk-Treasurer and Clerk-Treasurer." (9 employees in the unit).

17037-69-R: International Brotherhood of Operative Potters (Applicant) v. Cooper-Weeks Limited (Respondent).

Unit: "all employees of the respondent at its plant at 501 Alliance Avenue in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (276 employees in the unit).

(see indexed endorsement page 1221).

17041-69-R: Retail Clerks International Association (Applicant) v. Canada Safeway Limited (Respondent).

Unit: "all employees of the respondent employed at its retail stores at Thunder Bay, save and except store managers, assistant store managers, meat managers, produce managers, bakery managers, and persons above the rank of store manager, assistant store manager, meat manager, produce manager, bakery manager, and persons covered by subsisting collective agreements between the applicant and the respondent dated March 7th, 1969." (112 employees in the unit).

Having regard to the agreement of the parties.

17060-69-R: Canadian Brotherhood of Railway, Transport and General Workers (Applicant) v. Jack Samuels Garage Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND SALESMEN." (12 EMPLOYEES IN THE UNIT)

17061-69-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) v. LEWIS MOTORS (OTTAWA) LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND SALESMEN." (32 EMPLOYEES IN THE UNIT)

(SEE INDEXED ENDORSEMENT PAGE 1223)

17062-69-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) v. MORTON MOTORS OF OTTAWA LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND SALESMEN." (13 EMPLOYEES IN THE UNIT)

17063-69-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) v. OTTAWA MOTOR SALES LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALESMEN, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (47 EMPLOYEES IN THE UNIT)

17064-69-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) v. PRITCHARD & TAYLOR LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF NEPEAN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALESMEN, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (11 EMPLOYEES IN THE UNIT)

17065-69-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) v. SHANE DISTRIBUTORS LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF GLOUCESTER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND SALESMEN." (21 EMPLOYEES IN THE UNIT)

(SEE INDEXED ENDORSEMENT PAGE 1225)

17066-69-R: Canadian Brotherhood of Railway, Transport and General Workers (Applicant) v. Westway Motors Limited (Respondent)

Unit: "All employees of the respondent in the Township of Nepean, save and except foremen, persons above the rank of foreman, office staff, and salesmen." (11 employees in the Unit)

17069-69-R: United Steelworkers of America (Applicant) v. Kingstube Limited (Respondent)

Unit: "All employees of the respondent in Kingston, save and except foremen, persons above the rank of foreman, office and sales staff." (16 employees in the Unit)

17072-69-R: Building Service Employees' International Union Local 268 affiliated with the S.E.I.U. A F of L, C.I.O & C.L.C. (Applicant) v. The Lake Superior Board of Education (Respondent)

Unit: "All employees of the respondent engaged in maintenance, services and plant operations, save and except foremen, persons above the rank of foreman, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (11 Employees in the Unit)

HAVING REGARD TO THE AGREEMENT OF THE PARTIES

17075-69-R: Canadian Union of Public Employees (Applicant) v. Lambton Health Unit (Respondent)

Unit: "All employees of the respondent, save and except Chief Inspector, persons above the rank of chief inspector and registered and graduate nurses." (15 employees in the Unit)

FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE APPLICANT AND THE RESPONDENT THAT ONE EMPLOYEE IS EXCLUDED FROM THE BARGAINING UNIT

17076-69-R: The Canadian Union of Public Employees (Applicant) v. The Corporation of the City of Galt (Respondent)

Unit: "All employees of the respondent in its Parks and Recreation Department, save and except the Commissioner of Parks and Recreation, Assistant Directors of Recreation, Superintendent of Facilities, Superintendent of Parks, persons above these ranks and office staff." (14 employees in the Unit)

HAVING REGARD TO THE CIRCUMSTANCES OF THIS APPLICATION AND TO THE AGREEMENT OF THE APPLICANT AND THE RESPONDENT.

(SEE INDEXED ENDORSEMENT PAGE 1226)

17077-69-R: WINDSOR TYPOGRAPHICAL UNION, LOCAL 553 INTERNATIONAL TYPOGRAPHICAL UNION (APPLICANT) v. SHEPHERD PRINTING COMPANY LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT)

17080-69-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 197 (APPLICANT) v. FIRESTONE WAR VETERANS ASSOCIATION (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN HAMILTON." (3 EMPLOYEES IN THE UNIT)

17081-69-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL. UNION LOCAL 197 (APPLICANT) v. KIRK HOTEL (ESTATE OF S. HUSNAK) (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS)

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT WATERDOWN, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT)

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT WATERDOWN, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT MANAGERS AND PERSONS ABOVE THE RANK OF MANAGER." (3 EMPLOYEES IN THIS UNIT) (DISMISSED)

17083-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT)

UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT NIAGARA FALLS, SAVE AND EXCEPT PERSONS EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT)

HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT MEAT DEPARTMENT HEADS ARE INCLUDED IN THE BARGAINING UNIT

17088-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT NIAGARA FALLS, SAVE AND EXCEPT MEAT DEPARTMENT EMPLOYEES, ASSISTANT STORE MANAGER AND HEAD CASHIER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER AND HEAD CASHIER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT)

HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PRODUCE DEPARTMENT HEADS ARE INCLUDED IN THE BARGAINING UNIT

17089-69-R: United Steelworkers of America (Applicant) v. Steadman Industries Limited (Respondent)

Unit: "All employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (48 employees in the Unit)

17091-69-R: Tobacco Workers International Union (Applicant) v. Hodge Tobacco Company of Canada, Limited (Respondent)

Unit: "All seasonal employees of the respondent at Kingsville, save and except foremen, persons above the rank of foreman, office and sales staff, graders, buyers, chief engineers, laboratory technicians and persons covered by a subsisting collective agreement between the applicant and the respondent." (247 employees in the Unit)

HAVING REGARD TO THE AGREEMENT OF THE PARTIES

FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PRODUCE TESTING TECHNICIANS ARE INCLUDED IN THE BARGAINING UNIT

17099-69-R: International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 721 (Applicant) v. Nordic Airhalls of Canada Ltd. (Respondent)

Unit: "All ironworkers in the employ of the respondent in the Counties of Peterborough, Victoria and the Provisional County of Haliburton, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the Unit)

17102-69-R: Hotel and Restaurant Employees' and Bartenders' International Union, A.F.L.-C.I.O.-C.L.C. (Applicant) v. Cara Operations Limited (Respondent)

Unit: "All employees of the respondent in its airline Services Division, working at or out of its Flight Kitchens at Malton, save and except supervisiors, persons above the rank of supervisor, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (291 employees in the Unit)

17103-69-R: Service Employees Union, Local 204, AFL-CIO-CLC. (Applicant) v. The St. Catharines General Hospital (Respondent)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT EMPLOYEES COVERED BY EXISTING COLLECTIVE AGREEMENTS BETWEEN THE SERVICE EMPLOYEES' UNION LOCAL 204, THE LOCAL UNION No. 772 OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, PROFESSIONAL MEDICAL STAFF, INTERN DOCTORS, GRADUATE AND UNDERGRADUATE NURSES, GRADUATE AND UNDERGRADUATE PHARMACISTS, GRADUATE AND UNDERGRADUATE DIETITIANS, TECHNICAL PERSONNEL AS DESIGNATED BY THE LABOUR RELATIONS BOARD AND STUDENTS TAKING COURSES WHICH LEAD TO SUCH POSITIONS, FOREMEN, SUPERVISORS AND PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE STAFF, STUDENTS EMPLOYED ON A COOPERATIVE WORK PROGRAM OR DURING VACATION PERIODS, AND PERSONS EMPLOYED FOR LESS THAN 24 HOURS PER WEEK." (174 EMPLOYEES IN THE UNIT)

HAVING REGARD TO THE AGREEMENT OF THE PARTIES

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

17106-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. ARTHUR MURPHY CONTRACTING LIMITED (RESPONDENT)

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT)

17113-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. BOARD OF HEALTH OF THE CORPORATION OF THE COUNTY OF HURON (RESPONDENT) v. EMPLOYEE (OBJECTOR)

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, REGISTERED AND GRADUATE NURSES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT)

UNIT #2: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (15 EMPLOYEES IN THE UNIT)

HAVING REGARD TO THE AGREEMENT OF THE PARTIES

17118-69-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) v. SKYWAY LUGGAGE COMPANY (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NEWMARKET SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, HOME WORKERS, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (46 EMPLOYEES IN THE UNIT)

17121-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL #1988 (APPLICANT) v. CANTERBURY CONSTRUCTION CO. (RESPONDENT)

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LANARK, THE TOWNSHIPS OF NORTH CROSBY, SOUTH CROSBY, SOUTH BURGESS, BASTARD, SOUTH ELMSLEY AND KITLEY IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF WOLFORD, OXFORD AND SOUTH GOWER IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT)

17123-69-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 397 (APPLICANT) v. G.M. & H. O. HOLMES LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF THE CITY OF THUNDER BAY, ENGAGED IN THE APPLICATION OF ROOFING MATERIAL (OTHER THAN WOOD SHINGLES AND METAL), SAVE AND EXCEPT FOREMAN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING SCHOOL VACATION PERIODS AND EMPLOYEES OF THE RESPONDENT COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (12 EMPLOYEES IN THE UNIT)

HAVING REGARD TO THE AGREEMENT OF THE PARTIES

17125-69-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) v. EAGLEWOOD CONSTRUCTION (RESPONDENT)

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMAN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (18 EMPLOYEES IN THE UNIT)

17126-69-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 397 (APPLICANT) v. EAGLEWOOD CONSTRUCTION (RESPONDENT)

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT)

17130-69-R: OFFICE AND PROFESSIONAL EMPLOYEES' INTERNATIONAL UNION, AFL-CIO-CLC, LOCAL 343 (APPLICANT) v. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 91, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT)

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT ELECTED OFFICERS." (2 EMPLOYEES IN THE UNIT).

17139-69-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION NO. 1190 (APPLICANT) v. YORKDALE CONTRACT INTERIORS LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE INSTALLATION OF RESILIENT FLOORING IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMAN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT)

17140-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 93 (APPLICANT) v. ALTA VISTA TOWERS LTD. (RESPONDENT)

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT)

17146-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) v. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT)

UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT OAKVILLE, SAVE AND EXCEPT PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT)

HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT MEAT DEPARTMENT HEADS ARE INCLUDED IN THE BARGAINING UNIT

17157-69-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 397 (APPLICANT) v. THE NORTHERN ENGINEERING AND SUPPLY COMPANY LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF THE CITY OF THUNDER BAY, ENGAGED IN THE APPLICATION OF ROOFING MATERIAL (OTHER THAN WOOD SHINGLES AND METAL), SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING SCHOOL VACATION PERIODS AND EMPLOYEES OF THE RESPONDENT COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (3 EMPLOYEES IN THE UNIT)

HAVING REGARD TO THE AGREEMENT OF THE PARTIES

17160-69-R: Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America (Applicant) v. The Great Atlantic and Pacific Tea Company Limited (Respondent).

Unit: "All meat department employees of the respondent at its retail stores at Leamington, save and except persons employed for not more than twenty-four hours per week and students employed in off school hours and during the school vacation period." (7 employees in the Unit)

Having regard to the agreement of the parties, the Board noted that the parties have agreed that meat department heads are included in the bargaining unit

17165-69-R: Bricklayers, Masons and Plasterers International Union, Local Union No. 7 (Applicant) v. Omega Investments Limited (Respondent)

Unit: "All bricklayers and bricklayers' apprentices, stonemasons and stonemasons' apprentices in the employ of the respondent in The Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the Unit)

17173-69-R: Operative Plasterers' and Cement Masons' International Association of the United States and Canada (Ottawa-Hull) Local 124 (Applicant) v. Dean Chandler Insulating Limited (Respondent)

Unit: "All plasterers and plasterers' apprentices in the employ of the respondent in The Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the Unit)

17195-69-R: Labourers' International Union of North America, Local 527 (Applicant) v. Zambon Company Limited (Respondent)

Unit: "All Construction labourers in the employ of the respondent in the Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (2 Employees in the Unit)

17196-69-R: United Steelworkers of America (Applicant) v. Consolidated Hydrocarbons Limited (Respondent)

Unit: "All employees of the respondent company in Sault Ste. Marie, save and except foremen, persons above the rank of foreman, office and sales staff." (9 employees in the Unit)

17220-69-R: International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 721 (Applicant) v. Anstey and Gray Limited (Respondent)

Unit: "All ironworkers in the employ of the respondent in the Counties of Lennox and Addington, Frontenac and the Townships of Rear of Leeds and Lansdowne, Front of Leeds and Lansdowne, Rear of Yonge and Escott, Front of Yonge and Front of Escott in the County of Leeds, save and except non-working foreman and persons above the rank of non-working foreman." (6 employees in the Unit)

17221-69-R: Labourers' International Union of North America, Local 247 (Applicant) v. Omega Investments Ltd. (Respondent)

Unit: "All Construction labourers in the employ of the respondent in the Counties of Lennox and Addington, Frontenac and the Townships of Rear of Leeds and Lansdowne, Front of Leeds and Lansdowne, Rear of Yonge and Escott, Front of Yonge and Front of Escott in the County of Leeds, save and except non-working foremen and persons above the rank of non-working foreman." (6 Employees in the Unit)

Certified subsequent to Pre-Hearing Vote

17008-69-R: Optical & Plastic Technicians & Allied Workers Union Local 67 U.H.C. & M.W.I.U.-C.L.C. (Applicant) v.AOCO Limited (Respondent) v. International Union of Doll & Toy Workers of the United States & Canada (Incumbent)

Voting Constituency: "All employees of the respondent in Metropolitan Toronto, save and except foremen, foreladies, persons above the ranks of foreman and foreman, office and sales staff, and students employed during the school vacation period." (21 employees in the Unit).

Number of names of persons on revised Voters' List		23
Number of persons who cast ballots	23	
Number of spoiled ballots	11	
Number of ballots marked in favour of Applicant	12	
Number of ballots marked in favour of Incumbent	00	

Certified subsequent to Post-Hearing Vote

16306-69-R: Christian Labour Association of Canada (Applicant) v. Smith and Elston Company Limited (Respondent) v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 508 (Intervener #1) v. Labourers' International Union of North America, Local 1036 (Intervener #2) v. Sheet Metal Workers' International Association Local Union 504 (Intervener #3)

UNIT: "ALL PLUMBER, STEAMFITTER, PIPE WELDER, PIPE FITTER, GAS FITTER JOURNEYMEN AND APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN SAULT STE. MARIE AND ITS OUTLYING AREAS TO A POINT 5 MILES EAST OF BLIND RIVER, NORTH TO THE 49TH PARALLEL AND WEST TO MARATHON, SAVE AND EXCEPT NON-WORKING FOREMAN AND PERSONS ABOVE THE RANK OF NON- WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT)

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #1	2	

16988-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. RED ROOSTER SPORTSWEAR LIMITED (RESPONDENT) V. LOCAL 974, AMALGAMATED CLOTHING WORKERS OF AMERICA (CLC-AFL-CIO) (INTERVENER)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF CHARLOTTENBURGH IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY AND OFFICE AND SALES STAFF." (49 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		48
NUMBER OF PERSONS WHO CAST BALLOTS	48	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	29	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	19	

17059-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ATLAS-PITTS (JOINT VENTURE) (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT)

Number of Names of Persons on revised voters' List	6
Number of Persons who cast ballots	6
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	0

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JANUARY

No vote Conducted

16386-69-R: C.I.A.G. Employees Collective Bargaining Association, Toronto Division (Applicant) v. Co-operators Insurance Association of Guelph (Respondent)

Unit: "All office and clerical employees of the respondent at Metropolitan Toronto, with certain exceptions not here relevant." (98 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 1197)

16877-69-R: International Chemical Workers Union (Applicant) v. Gimmel Enterprises Limited (Respondent) (no employees)

(SEE INDEXED ENDORSEMENT PAGE 1203)

16915-69-R: Canadian Union of General Employees (Applicant) v. Scarborough General Hospital (Respondent) v. International Union of Operating Engineers Local 796 (Intervener) (28 Employees in the Unit)

16991-69-R: International Union of Operating Engineers, Local 796 (Applicant) v. Hospital Montfort (Respondent) (186 employees in the Unit)

17098-69-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local Union 91, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Charlton Motors Limited (Respondent) v. Group of Employees (Objectors)

Unit: "All employees of the respondent at Napanee, save and except foremen, persons above the rank of foreman, office and sales staff." (7 employees in the Unit)

17111-69-R: Carpenters Union 249 (Applicant) v. M. Belanger Ltee (Respondent) (2 employees in the Unit)

17114-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. HUGH M. GRANT LIMITED (RESPONDENT) (5 EMPLOYEES IN THE UNIT)

17115-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) v. EIFFEL CONSTRUCTION LTD. (4 EMPLOYEES IN THE UNIT)

17131-69-R: BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION, LOCAL UNION NO. 7, OTTAWA, ONTARIO (APPLICANT) v. OMEGA INVESTMENTS LTD. (RESPONDENT) (5 EMPLOYEES IN THE UNIT)

17164-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. DURIE MOSAIC & MARBLE LTD. (RESPONDENT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (INTERVENER) (2 EMPLOYEES IN THE UNIT)

17169-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) v. BLIER INC. (RESPONDENT) (6 EMPLOYEES IN THE UNIT)

17172-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. MISSISSAUGA CRANE SERVICE LTD. (RESPONDENT) (9 EMPLOYEES IN THE UNIT)

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

17057-69-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. DELUXE UPHOLSTERING LIMITED (RESPONDENT) v. DELUXE UPHOLSTERING EMPLOYEES ASSOCIATION (INTERVENER)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (45 EMPLOYEES IN THE UNIT)

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		41
NUMBER OF PERSONS WHO CAST BALLOTS	41	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	33	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

16574-69-R: CANADIAN UNION OF OPERATING ENGINEERS, (APPLICANT) v. STANDARD BRANDS LIMITED (RESPONDENT)

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER.". (4 EMPLOYEES IN THE UNIT)

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		2
NUMBER OF PERSONS WHO CAST BALLOTS	2	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1	

16791-69-R: GENERAL TRUCK DRIVERS UNION LOCAL 879 (APPLICANT) v. HOSTESS FOOD PRODUCTS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT FOREMEN, FORELADIES, SUPERVISORS AND THOSE ABOVE THE RANK OF FOREMAN, FORELADY AND SUPERVISOR, OFFICE STAFF, SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (259 EMPLOYEES IN THE UNIT)

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		269
NUMBER OF PERSONS WHO CAST BALLOTS	267	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	65	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	202	

16808-69-R: TEXTILE WORKERS UNION OF AMERICA CLC, AFL-CIO (APPLICANT) v. NORFOLK KNITTERS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN PORT DOVER, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR IN A CO-OPERATIVE TRAINING PROGRAM." (62 EMPLOYEES IN THE UNIT)

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		53
NUMBER OF PERSONS WHO CAST BALLOTS	53	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	20	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	33	

16810-69-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), (APPLICANT) v. SPAR AEROSPACE PRODUCTS LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS)

UNIT: "ALL OFFICE, CLERICAL, AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT MALTON OR METROPOLITAN TORONTO, SAVE AND EXCEPT SECTION HEADS, PERSONS ABOVE THE RANK OF SECTION HEAD, ONE SECRETARY TO EACH DEPARTMENT MANAGER OR TO A PERSON OF HIGHER STATUS, ENGINEERS, REGISTERED NURSES, TECHNICAL WRITERS, FIELD SERVICE REPRESENTATIVE, CONTRACT ADMINISTRATORS, LIAISON OFFICERS, TELETYPE OPERATORS, CLERKS ASSIGNED TO THE CONFIDENTIAL PAYROLL (COVERING PERSONS NOT EMPLOYED WITHIN THE SCOPE OF ANY BARGAINING UNIT), ALL EMPLOYEES ENGAGED IN THE INDUSTRIAL RELATIONS DEPARTMENT INCLUDING PERSONNEL ENGAGED IN PLANT SECURITY AND PROTECTION, AND PERSONS COVERED BY EXISTING COLLECTIVE AGREEMENTS." (25 EMPLOYEES IN THE UNIT)

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		25
NUMBER OF PERSONS WHO CAST BALLOTS	24	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	17	

17004-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. LYNKAR WATCH COMPANY LIMITED (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (22 EMPLOYEES IN THE UNIT)

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		22
NUMBER OF PERSONS WHO CAST BALLOTS	22	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	9	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	13	

17022-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) v. THE BUTCHER ENGINEERING ENTERPRISES LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (98 EMPLOYEES IN THE UNIT)

Number of Names of Persons on Revised Voters' List		79
Number of persons who cast ballots	79	
Number of ballots marked in favour of applicant	21	
Number of ballots marked against applicant	58	

17036-69-R: General Truck Drivers Union Local 879 (Applicant) v. Koch Transport Ltd. (Respondent) v. Brewery Workers Local Union Number 173 and the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America (Intervener)

Unit: "All employees of the respondent at Waterloo, save and except foremen, persons above the rank of foremen, dispatchers, office staff, and solicitor salesmen." (53 employees in the Unit)

Number of Names of Persons on revised Voters' List		53
Number of Persons who cast ballots	53	
Number of ballots marked in favour of applicant	8	
Number of ballots marked in favour of Intervener	45	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JANUARY

17136-69-R: The Lakehead Registered Nursing Assistants Bargaining Association (Applicant) v. St. Joseph General Hospital (Respondent) v. Building Service Employees' International Union, Local 268 (Intervener). (55 employees).

17137-69-R: The Lakehead Registered Nursing Assistants Bargaining Association (Applicant) v. McKellar General Hospital (Respondent) v. Building Service Employees' International Union, Local 268 (Intervener). (65 employees).

17145-69-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Beco Equipment Limited (Respondent). (2 employees).

17168-69-R: Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. The Great Atlantic and Pacific Tea Company, Limited (Respondent). (13 employees).

17185-69-R: The Canadian Union of Public Employees (Applicant) v. The Corporation of the Town of Carleton Place (Respondent). (17 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING JANUARY

16932-69-R: NICHOLAS LAUER ET AL, BEING EMPLOYEES OF BARTON DISTILLING (CANADA) LIMITED (APPLICANTS) v. THE DISTILLERY, RECTIFYING, WINE AND ALLIED WORKERS' INTERNATIONAL UNION OF AMERICA, A.F. OF L. -C.I.O. (RESPONDENT) (GRANTED)

(RE: BARTON DISTILLING (CANADA) LIMITED)

UNIT: "ALL EMPLOYEES OF BARTON DISTILLING (CANADA) LIMITED IN THE PLANT OF THE COMPANY LOCATED IN COLLINGWOOD, ONTARIO, SAVE AND EXCEPT ALL OF THE COMPANY'S STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE COMPANY'S PLANT, MANAGER, SUPERINTENDENTS, DEPARTMENT HEADS, SUPERVISORS, NON-WORKING FOREMEN, CHEMISTS (THOSE WHO GENERALLY PERFORM WORK REQUIRING A DEGREE OF SCIENCE), GENERAL ADMINISTRATIVE OFFICE EMPLOYEES, ALL OTHER EMPLOYEES POSSESSING FULL AUTHORITY TO HIRE AND DISCHARGE EMPLOYEES, AND EXCLUDING SUCH EMPLOYEES AS ARE COVERED BY EXISTING AGREEMENTS WITH OTHER LABOUR ORGANIZATIONS." (19 EMPLOYEES IN THE UNIT)

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		18
NUMBER OF PERSONS WHO CAST BALLOTS	18	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	1	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	17	

16989-69-R: STATIONARY ENGINEERS OF RALSTON PURINA OF CANADA LTD. (APPLICANT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (RESPONDENT) (GRANTED)

(RE: RALSTON PURINA OF CANADA LIMITED)

UNIT: "ALL STATIONARY ENGINEERS AND HELPERS IN THE EMPLOY OF THE RALSTON PURINA OF CANADA LTD., CLARKSON, ONTARIO PLANT, SAVE AND EXCEPT CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT)

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		4
NUMBER OF PERSONS WHO CAST BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	4	

17045-69-R: LEO SMITH (APPLICANT) v. LAUNDRY & LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 (RESPONDENT) v. NEW YORK WINDOW CLEANING COMPANY LIMITED (INTERVENER). (4 EMPLOYEES IN THE UNIT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1229).

17078-69-R: Trades Association of Union Carbide, Belleville Ont. (Applicant) v. Local 380 United Rubber, Cork, Linoleum & Plastic Workers of America (Respondent) v. Union Carbide Canada Limited, Plastics & Chemicals (Intervener) (16 employees) (DISMISSED)

17082-69-R: Andre Construction Company, 474 West Street North, P.O. Box 566, Orillia, Ontario (Applicant) v. Central Ontario District Council, United Brotherhood of Carpenters and Joiners of America (Respondent) (4 employees) (DISMISSED)

17109-69-R: Employees of Johnson, Paterson, Williams Ltd. Represented by J. Smith (Applicant) v. Oil and Gas Burner Technicians Union - Local 1267 L.I.U. of N.A. (Respondent) v. Johnson, Paterson, Williams (Intervener) (4 employees) (DISMISSED)

17187-69-R: Colin Forward (Applicant) v. The Central Ontario District Council United Brotherhood of Carpenters and Joiners of America (Respondent) (3 employees) (DISMISSED)

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING JANUARY

17197-69-U: S. I. Guttman Limited (Applicant) v. The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Local Union 46 (Respondent)
(WITHDRAWN)

17199-69-U: Watts and Henderson Limited (Applicant) v. The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Local Union 46 (Respondent)
(WITHDRAWN)

APPLICATION FOR CONSENT TO PROSECUTE DISPOSED OF DURING JANUARY

17068-69-U: Ottawa Typographical Union, Number 102, (Applicant) v. The Ottawa Citizen, A division of The Southam Press Ltd. (Respondent)
(WITHDRAWN)

17093-69-U: Canadian Brotherhood of Railway, Transport and General Workers (Applicant) v. Shane Distributors Limited (Respondent)
(WITHDRAWN)

17129-69-U: Canadian Brotherhood of Railway, Transport and General Workers (Applicant) v. Shane Distributors Limited (Respondent)
(WITHDRAWN)

17198-69-U: S. I. Guttman Limited (Applicant) v. Stanley Newmarch and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Local Union 46 (Respondents)
(WITHDRAWN)

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF

DURING JANUARY

16490-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. CHAIRTEX MANUFACTURING LIMITED (RESPONDENT) (GRANTED).

-AND-

16449-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. CHAIRTEX MANUFACTURING LIMITED (RESPONDENT) (GRANTED).

-AND-

16419-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. CHAIRTEX MANUFACTURING LIMITED (RESPONDENT)
(GRANTED)

(SEE INDEXED ENDORSEMENT PAGE 1231)

16655-69-U: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (COMPLAINANT) v. COUNTRY READY-MIX LIMITED AND GINO TESTA (RESPONDENTS)
(DISMISSED)

16878-69-U: INTERNATIONAL CHEMICAL WORKERS UNION (COMPLAINANT) v. SHAKESPEARE COMPANY OF CANADA (RESPONDENT)
(WITHDRAWN)

16993-69-U: MR. GEORGE SCARPELLINI (COMPLAINANT) v. UNITED BROTHERHOOD OF CARPENTERS OF AMERICA LOCAL 2486 (RESPONDENT)
(DISMISSED)

(SEE INDEXED ENDORSEMENT PAGE 1238)

17051-69-U: DOUGLAS FOX, PAUL HICKEY AND BRUCE WILKES (COMPLAINANT) v. MICHAEL CLARK (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1239).

17067-69-U: DONALD W. STAFFORD, RR1 LEAMINGTON ONT. (COMPLAINANT) v. SMITH TRANSPORT LTD. 150 COMMISIONER ST. TORONTO, ONT. (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1240).

17074-69-U: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (COMPLAINANT) v. CUSTOM GLASS LIMITED (RESPONDENT). (WITHDRAWN).

17094-69-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) v. OSCAR GOODMAN DRUGS CARRYING ON BUSINESS UNDER THE TRADE NAME OF SHOPPERS DRUG MART (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1241).

17119-69-U: RETAIL CLERKS UNION, LOCAL 486 (COMPLAINANT) v. STEINBURG'S LIMITED (RESPONDENT). (WITHDRAWN).

17138-69-U: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (COMPLAINANT) v. SHANE DISTRIBUTORS LIMITED (RESPONDENT). (WITHDRAWN).

17152-69-U: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, CLC (COMPLAINT) v. HANES OF CANADA LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATION UNDER SECTION 34(3) DISPOSED OF DURING JANUARY

16916-69-M: TORONTO PRINTING PRESSMEN & ASSISTANTS' UNION NO. 10 (TRADE UNION) AND FULLERTON-WESTON PUBLISHING LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 1242).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING JANUARY

16832-69-M: LOCAL #717, TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) v. KROY UNSHRINKABLE WOOLS, LIMITED, TORONTO OF HARVEY WOODS LIMITED, WOODSTOCK, ONTARIO (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 1245).

16973-69-M: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220 (APPLICANT) v. THE MEAFORD GENERAL HOSPITAL (RESPONDENT).

17184-69-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA AND ITS LOCAL 673 (APPLICANT) v. DOUGLAS AIRCRAFT COMPANY OF CANADA LTD. (RESPONDENT).

JURISDICTIONAL DISPUTES

17161(A)-69-JD: ABE DICK MASONRY LIMITED (COMPLAINANT) v. LOCAL UNION 18, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AND INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 837 (RESPONDENTS). (INTERIM ORDER - GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1248).

17280(A)-69-JD: STEWART & HINAN CONSTRUCTION LIMITED (COMPLAINANT) v. UNITED BROTHERHOOD OF CARPENTERS JOINERS OF AMERICA, LOCAL UNION #38, AND INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 736 (RESPONDENTS) v. BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL 4 (INTERVENER #1) v. LABORER'S INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (INTERVENER #2). (INTERIM ORDER - GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1249).

17280(B)-69-JD: STEWART & HINAN CONSTRUCTION LIMITED (APPLICANT) v. INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 736 (RESPONDENT). (CEASE AND DESIST - GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1251).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

16760-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. SANDERCOCK CONSTRUCTION LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER).

(SEE INDEXED ENDORSEMENT PAGE 1252).

16862-69-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) v. SPUN-METALS LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 1254).

17061-69-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) v. LEWIS MOTORS (OTTAWA) LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 1255).

INDEXED ENDORSEMENTS

16386-69-R: C.I.A.G. EMPLOYEES COLLECTIVE BARGAINING ASSOCIATION, TORONTO DIVISION (APPLICANT) v. CO-OPERATORS INSURANCE ASSOCIATION OF GUELPH (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFFE.

DECISION OF THE BOARD: JANUARY 7, 1970.

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2. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT HAS APPLIED TO BE CERTIFIED FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DESCRIBED AS "CLAIMS ADJUSTERS AND OFFICE TRAINEES INVOLVED IN ADJUSTING CLAIMS IN THE COUNTY OF YORK INCLUDING METROPOLITAN TORONTO". THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO THE APPROPRIATENESS OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT IN THIS MATTER. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED NOVEMBER 21, 1969, THE APPLICANT BY LETTER DATED NOVEMBER 30, 1969 MADE CERTAIN OBJECTIONS WITH RESPECT TO THE EXAMINER'S REPORT AND REPRESENTATIONS AS TO THE EFFECT THAT SHOULD BE

GIVEN TO THE EVIDENCE CONTAINED IN THE SAID REPORT. THE RESPONDENT BY LETTER DATED DECEMBER 3, 1969 ADVISED THE BOARD THAT THE RESPONDENT DID NOT INTEND TO MAKE ANY FURTHER REPRESENTATIONS TO THE BOARD IN THIS MATTER. IT WAS THE RESPONDENT'S SUBMISSION THAT THE APPROPRIATE BARGAINING UNIT SHOULD BE DESCRIBED AS ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS TORONTO DIVISION WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. THE DESCRIPTION OF THE RESPONDENT'S PROPOSED BARGAINING UNIT WOULD INCLUDE THE CLAIMS ADJUSTERS AND OFFICE TRAINEES INVOLVED IN ADJUSTING CLAIMS.

3. THERE WERE TWENTY-TWO PERSONS INCLUDED IN THE UNIT PROPOSED BY THE APPLICANT ON THE DATE THE APPLICATION WAS MADE WHEREAS THE RESPONDENT'S PROPOSED BARGAINING UNIT WOULD INCLUDE THE NAMES OF NINETY-EIGHT PERSONS.

4. IT IS READILY APPARENT FROM THE EVIDENCE IN THE REPORT OF THE EXAMINER THAT THE CLAIMS ADJUSTERS AND OFFICE TRAINEES INVOLVED IN ADJUSTING CLAIMS SHARE A COMMUNITY OF INTEREST BECAUSE OF THE FACT THAT THEY SHARE SIMILAR TRAINING, SKILLS, SUPERVISION AND WORKING CONDITIONS. HOWEVER, IT IS ALSO APPARENT THAT THE OTHER OFFICE STAFF AND THE CLERICAL STAFF EMPLOYED BY THE RESPONDENT SHARE A COMMUNITY OF INTEREST WITH THE ADJUSTERS AND OFFICE TRAINEES FOR OTHER REASONS. THE OFFICE AND CLERICAL STAFF ARE EMPLOYED TO SERVICE AND SUPPORT THE WORK PERFORMED BY THE CLAIMS ADJUSTERS AND THE OFFICE TRAINEES INVOLVED IN ADJUSTING CLAIMS. THE ADJUSTERS AND OFFICE TRAINEES SPEND AT LEAST FIFTY PER CENT OF THEIR TIME IN THE OFFICES OF THE RESPONDENT. WHILE THE ADJUSTERS AND OFFICE TRAINEES EXERCISE SKILLS WHICH ARE DIFFERENT FROM THE SKILLS EXERCISED BY OTHER OFFICE AND CLERICAL STAFF, THE SAME CAN BE SAID WITH RESPECT TO MOST OCCUPATIONAL CLASSIFICATIONS.

5. WHILE THE APPLICANT RELIED ON THE PROVISIONS OF SECTION 6(2) OF THE LABOUR RELATIONS ACT IN SUPPORT OF ITS CLAIM THAT THE UNIT PROPOSED BY IT WAS AN APPROPRIATE BARGAINING UNIT, THERE IS NO EVIDENCE THAT THE EMPLOYEES WHO ARE DESCRIBED AS CLAIMS ADJUSTERS AND OFFICE TRAINEES INVOLVED IN ADJUSTING CLAIMS ARE "MEMBERS OF A CRAFT . . . AND COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT". SINCE THE APPLICANT UNION WAS ESTABLISHED IMMEDIATELY PRIOR TO THIS APPLICATION BEING MADE, IT IS READILY APPARENT THAT IT HAS NO HISTORY OF REPRESENTING EMPLOYEES IN ANY CRAFT. IF THE APPLICANT IS TO SUCCEED IN ESTABLISHING THAT THE BARGAINING UNIT PROPOSED BY IT IS AN APPROPRIATE BARGAINING UNIT, IT MUST DO SO UNDER THE PROVISIONS OF SECTION 6(1) OF THE ACT. SINCE IT IS EVIDENT THAT THE OTHER OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT ARE ASSOCIATED WITH AND SERVICE THE CLAIMS ADJUSTERS AND OFFICE TRAINEES INVOLVED IN ADJUSTING CLAIMS IN THE PERFORMANCE OF THEIR WORK, AND SINCE MANY OF

THEIR WORKING CONDITIONS ARE SIMILAR, WE MUST FIND THAT A BARGAINING UNIT COMPRISED OF ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT WOULD SHARE A COMMUNITY OF INTEREST BECAUSE OF THEIR FUNCTIONAL COHERENCE AND INTERDEPENDENCE.

6. FOR THE REASONS SIMILAR TO THOSE GIVEN IN THE CORPORATION OF THE TOWNSHIP OF MARKHAM CASE, OLRB MONTHLY REPORT, AUGUST 1969, P. 592, AND HAVING GIVEN EFFECT TO THE BOARD'S WELL KNOWN AVERSION TO FRAGMENTATION OF APPROPRIATE BARGAINING UNITS, THE BOARD FINDS THAT ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 9, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. THE APPLICATION IS THEREFORE DISMISSED.

16846-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF HEALTH OF NIAGARA DISTRICT HEALTH UNIT (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: M. LEVINSON AND J. BEATTIE FOR THE APPLICANT; IDA E. MUNKITTRICK AND J. F. SWAYZE FOR THE RESPONDENT; MRS. DOROTHY MCBRAYNE AND MRS. JUNE L. HARPER FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: JANUARY 19, 1970.

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2. THE APPLICANT IS APPLYING FOR CERTIFICATION OF ALL EMPLOYEES OF THE RESPONDENT WITH CERTAIN EXCEPTIONS. THE RESPONDENT REQUESTED THE BOARD TO EXCLUDE FROM THE UNIT THE REGISTERED NURSING ASSISTANTS AND MRS. SWEIGARD CLASSIFIED BY THE RESPONDENT AS OFFICE MANAGER. THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF MRS. SWEIGARD AND, FOLLOWING THE EXAMINER'S REPORT DATED DECEMBER 1ST, 1969, RECEIVED THE ORAL REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THAT REPORT AT A HEARING FOR THAT PURPOSE ON DECEMBER 23RD, 1969.

3. We have carefully considered all of the evidence contained in the Examiner's report and the representations of the parties and, having regard to the criteria set out in the Falconbridge Nickel Mines Limited Case, 1966 OLRB M.R., p. 379, we find that Mrs. Sweigard does not exercise managerial functions and is not employed in a confidential capacity in matters relating to labour relations within the meaning of section 1(3)(b) of The Labour Relations Act and is therefore an employee of the respondent included in the bargaining unit described below.

4. At the first hearing of this matter argument was presented to the Board at the time it inquired into the description of the bargaining unit with respect to whether the Registered Nursing Assistants should be included in the bargaining unit. We were advised that as of the date of the application there were eight such persons, none of whom was shown on the schedules filed by the respondent with the Board. Similar representations have been made to the Board in other cases and the Board has generally included this type of employee in public health employees bargaining units. We refer to the Board of Health of the York Oshawa District Health Unit, 1969 OLRB M.R., p. 340 and Board of Health of the York County Health Unit, Board File No. 12621-66-R. The respondent in this case submitted that the Registered Nursing Assistants work with a medical team of registered nurses and doctors and are considered to be part of the nursing staff. The Board, however, has included Registered Nursing Assistants in public health bargaining units in the past and we are of the opinion that we should not exclude them in this matter. Having regard to the foregoing, we find that the Registered Nursing Assistants are employees of the respondent included in the bargaining unit.

5. There was filed in this matter a petition in opposition to the application signed by 14 employees of the respondent, two of whom were claimed by the applicant as members. However, in view of the fact that the membership position of the union would only entitle it to a representation vote in any event, it is not necessary for the Board to inquire into the circumstances relating to the petition.

6. The Board further finds that all employees of the respondent save and except registered nurses, assistant chief public health inspector and persons above the rank of assistant chief public health inspector, constitute a unit of employees of the respondent appropriate for collective bargaining.

7. The Board is satisfied on the basis of all the evidence before it that not less than forty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made,

WERE MEMBERS OF THE APPLICANT ON OCTOBER 21ST, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

16874-69-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. SHAKESPEARE COMPANY (CANADA) LTD. (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: D. MACDONALD FOR THE APPLICANT, C. G. RIGGS FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 27, 1970.

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2. THE BOARD HAS CONSIDERED THE REPORT OF THE EXAMINER DATED NOVEMBER 26, 1969, AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE REPORT MADE AT A HEARING OF THE BOARD ON JANUARY 12, 1970.

3. THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ORILLIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD NOTES THE WRITTEN AGREEMENT OF THE PARTIES THAT SHARON POTTER, AGNES SMITH, VIRGINIA CODLIN, BARBARA STEFNIK AND ROSEMARY SNOW, ALL OF WHOM WERE HIRED AFTER THE DATE OF THE MAKING OF THE APPLICATION ON OCTOBER 21, 1969, ARE NOT INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT.

5. The Board notes the written agreement of the parties that Nancy Casula and Stella Tassone, who were on leave of absence between October 16 and October 27, 1969, are included in the bargaining unit for purposes of the count.

6. The Board notes the written agreement of the parties that Philip Carroll, Philip Cooper, David Engeland and Mary Engeland, classified as students employed during the school vacation period, are not included in the bargaining unit for purposes of the count.

7. The Board notes the written agreement of the parties that William Jackson, who is employed by the respondent on maintenance and security, is included on the list for purposes of the count.

8. Based on the evidence contained in the Report of the Examiner and the representations of the parties, the Board finds that Wayne Diamond, who is classified as a shipper and receiver, does not exercise managerial functions within the meaning of section 1(3)(b) of the Act and is included in the bargaining unit.

9. The Board was advised that a number of persons who had been in the employ of the respondent and were discharged prior to the date of the making of the instant application were the subject of a complaint made by the applicant under section 65 of the Act. By leave of the Division of the Board seized with the complaint, the complainant was allowed to withdraw its complaint. The Board was advised by counsel for the respondent, by letter dated January 16, 1970, that the applicant and the respondent entered into an agreement on January 6, 1970 which provided for the settlement of various matters including the status of the aggrieved persons with respect to the instant application. The portion of the settlement relevant to this application, as set out in the letter of counsel for the respondent, in effect, accepts the list of employees filed by the respondent. This list is subject to the agreements of the parties recorded above. By letter dated January 23, 1970, the applicant advised the Board that the respondent's statement of the effect of the settlement of the section 65 complaint is correct.

10. The list of employees included in the bargaining unit for purposes of the count therefore numbers 17. The applicant filed evidence of membership for a total of 9 persons whose names appear on the respondent's list.

11. The Board accordingly is satisfied on the basis of all the evidence before it that not less than forty-five per cent of the employees of the respondent in the bargaining unit, at the time

THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 29, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

13. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

14. THE MATTER IS REFERRED TO THE REGISTRAR.

16877-69-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) v. GIMMEL ENTERPRISES LIMITED (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

DECISION OF THE BOARD: JANUARY 6, 1970.

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2. IN THIS CASE THE RESPONDENT ALLEGED THAT IT HAD NO EMPLOYEES AND, ACCORDINGLY, AN EXAMINER WAS APPOINTED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE APPROPRIATE BARGAINING UNIT INCLUDING THE EMPLOYMENT STATUS OF THOSE PERSONS CLAIMED TO BE EMPLOYEES BY THE APPLICANT, AND THE NAME OF THE APPROPRIATE EMPLOYER.

3. HAVING REGARD TO THE EXAMINER'S REPORT DATED THE 3RD DAY OF DECEMBER 1969, THE BOARD FINDS THAT THOSE PERSONS ALLEGED BY THE APPLICANT TO BE EMPLOYEES ARE NOT IN FACT EMPLOYED BY THE RESPONDENT. IT FURTHER APPEARS THAT THOSE PERSONS ARE EMPLOYED BY SALMON PLUMBING AND HEATING WHICH IS A PARTNERSHIP HAVING SOME RELATIONSHIP TO THE RESPONDENT.

4. THE APPLICANT HAS ASKED THE BOARD TO ALTER THE NAME OF THE RESPONDENT TO SALMON PLUMBING AND HEATING COMPANY PURSUANT TO SECTION 78 OF THE LABOUR RELATIONS ACT IF THE BOARD SHOULD FIND THAT THE EMPLOYEES WHO ARE THE SUBJECT OF THIS APPLICATION ARE NOT EMPLOYED BY THE RESPONDENT. IT ALSO ASKS THAT THE DESCRIPTION OF THE PROPOSED BARGAINING UNIT BE AMENDED TO CONFORM WITH ANY ALTERATION IN THE NAME OF THE RESPONDENT.

5. While Salmon Plumbing and Heating Company has a relationship to the respondent it is a separate entity with employees other that the employees who are the subject of this application. Neither Salmon Plumbing and Heating Company nor the additional employees have received notice of these proceedings. Also there are certain questions that might arise concerning the appropriateness of the bargaining unit should the description of the bargaining unit be amended as suggested.

6. In all these circumstances the applicant's request is denied and the application is dismissed.

16960-69-R: International Union of District 50, U.M.W.A. (Applicant) v. CUSTOM GLASS LTD. (Respondent) v. United Glass & Ceramic Workers of North America, AFL-CIO-CLC (Intervener).

BEFORE: O. B. Shime, Vice-Chairman and Board Members E. Boyer and F. W. Murray.

APPEARANCES AT THE HEARING: Frank Daly, Michael Barko for the applicant; F. R. von Veh, W. T. Sinclair for the respondent; Jim Perna, Matt Houston for the intervener.

DECISION OF THE BOARD: January 12, 1970.

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3. The Board further finds that all employees of the respondent at Newcastle, save and except foremen, persons above the rank of foreman, office and sales staff, constitute a unit of employees of the respondent appropriate for collective bargaining.

4. There being no history of students being employed during the school vacation period and persons regularly employed for not more than 24 hours per week, the Board in accordance with its usual policy does not see fit to exclude these persons from the bargaining unit.

5. The respondent submitted that this application was premature by reason of the build-up of its work force. Having regard to the representations and the evidence, we find that the respondent has a planned programme to increase its work force, and that there is a probability that the increase will take place within a specified period. The Board therefore postpones the making of any final determination in this application until a future date.

6. THE BOARD DIRECTS THE RESPONDENT TO REPORT TO THE BOARD PERIODICALLY ON THE NUMBERS OF PERSONS IN ITS EMPLOY IN THE AFORESAID BARGAINING UNIT. THE FIRST REPORT IS TO BE SUBMITTED TO THE BOARD FORTHWITH, AND SUCCEEDING REPORTS ARE TO BE MADE EVERY FIFTEEN DAYS THEREAFTER AND TO CONTINUE UNTIL THE BOARD OTHERWISE DIRECTS.

16975-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. FIELDING CONSTRUCTION COMPANY, (OWNED AND OPERATED BY PENAGE QUARTZ LIMITED) (RESPONDENT) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (INTERVENER).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: D. M. STOREY, J. KEUHL FOR THE APPLICANT; C. FIELDING, D. FIELDING FOR THE RESPONDENT; P. E. GUERTIN FOR THE INTERVENER.

DECISION OF THE BOARD: JANUARY 8, 1970.

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3. AT THE HEARING IN THIS MATTER, THE APPLICANT AND THE RESPONDENT AGREED THAT THE APPROPRIATE BARGAINING UNIT IN THIS APPLICATION FOR CERTIFICATION WOULD BE ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF COPPER CLIFF, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF.

4. THE INTERVENER FILED WITH THE BOARD A COLLECTIVE AGREEMENT MADE ON AUGUST 6, 1969 AND EFFECTIVE UNTIL APRIL 30, 1971, BETWEEN THE INTERVENER AND THE SUDBURY CONSTRUCTION ASSOCIATION. IN THIS COLLECTIVE AGREEMENT, THE SUDBURY CONSTRUCTION ASSOCIATION RECOGNIZES THE INTERVENER AS THE SOLE BARGAINING AGENT FOR ALL CARPENTERS, SUB-FOREMEN, CARPENTERS FOREMEN AND APPRENTICES EMPLOYED ON THE PROJECTS OF THE CONTRACTOR. THE AREA COVERED BY THE AGREEMENT IS STATED AS BEING, "ALL AREA WITHIN THE DISTRICT OF SUDBURY, LYING SOUTH OF THE NORTH-WESTERN ANGLE OF MARGARET TOWNSHIP ON A LINE PROJECTED EASTERLY TO THE NORTH-EASTERN ANGLE OF SLADEN TOWNSHIP, AND INCLUDING THE MAINLAND PORTION OF THE DISTRICT OF MANITOULIN LYING ADJACENT TO THE DISTRICT OF SUDBURY." IT WAS AGREED BY THE APPLICANT AND THE RESPONDENT THAT THE RESPONDENT WAS BOUND BY THIS COLLECTIVE AGREEMENT.

5. THE INTERVENER, NOTWITHSTANDING THE FACT THAT IT HAD BARGAINING RIGHTS FOR ITS CRAFT, STRONGLY MAINTAINED THAT THIS APPLICATION WAS NOT PROPERLY BEFORE THE BOARD AND SHOULD HAVE BEEN

FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT. THE APPLICANT MAINTAINED THAT IT WAS ENTITLED TO FILE ITS PRESENT APPLICATION AND ADDED THAT IT HAD NOT BEEN AWARE OF THE INTERVENER'S BARGAINING RIGHTS FOR ITS CRAFT AND WAS UNAWARE OF ANY OTHER OUTSTANDING CRAFT BARGAINING RIGHTS. THE RESPONDENT DID NOT TAKE ANY POSITION ON THE MERITS OF THIS APPLICATION, BUT STATED THAT THERE WERE NO OUTSTANDING CRAFT BARGAINING RIGHTS OTHER THAN THOSE OF THE INTERVENER. THE APPLICANT USUALLY ORGANIZES EMPLOYEES ENGAGED IN PURSUITS OUTSIDE THE CRAFTS NORMALLY FOUND WITHIN THE CONSTRUCTION INDUSTRY. CONVERSELY, EMPLOYEES ENGAGED IN PURSUITS WITHIN THE CONSTRUCTION INDUSTRY ARE USUALLY ORGANIZED BY TRADE UNIONS THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAIN TO THE CONSTRUCTION INDUSTRY. HOWEVER, TRADE UNIONS FROM THE LAST-MENTIONED GROUP DO, ON OCCASIONS, SEEK BARGAINING RIGHTS FOR EMPLOYEES ENGAGED IN PURSUITS OUTSIDE THE CONSTRUCTION INDUSTRY, SUCH WORK AS IN SHOPS, YARDS OR QUARRIES, SEE, FOR EXAMPLE, Quinte Plumbing & Heating CASE, OLRB MONTHLY REPORT, JANUARY 1963, P. 393; Cornwall Gravel Company Limited CASE, OLRB MONTHLY REPORT, SEPTEMBER 1967, P. 550; AND H. J. McFarland Construction Company Limited CASE, OLRB MONTHLY REPORT, FEBRUARY 1969, P. 1130. THE BOARD FINDS THAT THE APPLICANT IS, HAVING REGARD TO THE PROVISIONS OF THE LABOUR RELATIONS ACT, ENTITLED TO BRING THE PRESENT APPLICATION.

6. THE RESPONDENT'S BUSINESS OPERATIONS CONSIST OF GENERAL CONTRACTING, EQUIPMENT RENTAL, OPEN PIT MINING IN QUARRIES AND MINING CONTRACT WORK. IN ADDITION, THE RESPONDENT OPERATES A REPAIR SHOP IN WATERS TOWNSHIP. IT IS POSSIBLE TO DIVIDE THE RESPONDENT'S BUSINESS OPERATIONS INTO CONSTRUCTION INDUSTRY AND NON-CONSTRUCTION INDUSTRY OPERATIONS. IN ITS NON-CONSTRUCTION OPERATION, ON NOVEMBER 12, 1969, THE DATE OF THE MAKING OF THE APPLICATION, THE RESPONDENT EMPLOYED A WELDER AND A TRUCK DRIVER AT ITS REPAIR SHOP IN WATERS TOWNSHIP IN THE DISTRICT OF SUDBURY, A LOADER OPERATOR AT A GRAVEL PIT IN WATERS TOWNSHIP, AND A SHOVEL OPERATOR AT THE QUARTZ QUARRY OF CARMAN CONSTRUCTION LIMITED IN DIEPPE TOWNSHIP IN THE DISTRICT OF SUDBURY. IN ITS CONSTRUCTION INDUSTRY OPERATION, ON NOVEMBER 12, 1969, THE DATE OF THE MAKING OF THE APPLICATION, THE RESPONDENT EMPLOYED A SHOVEL OPERATOR AND A TRUCK DRIVER FOR A CONTRACTOR AT PARRY SOUND, TWO BULLDOZER OPERATORS OPERATING HEAVY EQUIPMENT AT THE C.I.L. ACID PLANT, COPPER CLIFF, A BULLDOZER OPERATOR AND TWO LABOURERS INSTALLING SEWER AND WATER LINES AT A HOUSING JOB AT COPPER CLIFF, AND TWO LABOURERS AT THE FROOD STOBIE WATERLINE FOR INCO IN SUDBURY.

7. WHERE A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO THE CONSTRUCTION INDUSTRY SEEKS BARGAINING RIGHTS FOR EMPLOYEES ENGAGED IN PURSUITS OUTSIDE THE CONSTRUCTION INDUSTRY, IT HAS BEEN THE PRACTICE OF THE BOARD TO RESTRICT THE BARGAINING UNIT TO THE MUNICIPALITY WHERE THE PURSUIT IS PRACTISED, SEE,

FOR EXAMPLE PENINSULA READY MIX AND SUPPLIES LTD. CASE, OLRB MONTHLY REPORT, DECEMBER 1962, P. 331, AND CORNWALL GRAVEL COMPANY LIMITED CASE, OLRB MONTHLY REPORT, SEPTEMBER 1967, P. 550. SIMILARLY, WHERE A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO THE CONSTRUCTION INDUSTRY SEEKS BARGAINING RIGHTS FOR EMPLOYEES OF AN EMPLOYER ENGAGED IN MORE THAN ONE PURSUIT, ONE OF WHICH FALLS WITHIN AND ONE OF WHICH FALLS OUTSIDE THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT, IT HAS BEEN THE PRACTICE OF THE BOARD TO SEPARATE THE CONSTRUCTION INDUSTRY PORTION OF THE EMPLOYER'S BUSINESS FROM ITS NON-CONSTRUCTION INDUSTRY ACTIVITIES, SEE, FOR EXAMPLE, H. J. MCFARLAND CONSTRUCTION COMPANY LIMITED CASE, OLRB MONTHLY REPORT, FEBRUARY 1969, P. 1130, AND DEAL WITH THESE ACTIVITIES SEPARATELY.

8. WITH RESPECT TO THE "ALL EMPLOYEES" UNIT WHICH THE APPLICANT IS SEEKING, THE BOARD HAS EXPRESSED CONCERN ABOUT BARGAINING UNITS OF CONSTRUCTION INDUSTRY EMPLOYEES BEING ALL INCLUSIVE, AS THEY ARE WHEN DESCRIBED IN TERMS OF "ALL EMPLOYEES". SUCH UNITS MAY WELL LEAD TO JURISDICTIONAL DISPUTES PARTICULARLY WHERE ONLY ONE OR TWO TRADES ARE EMPLOYED AT THE DATE OF THE MAKING OF THE APPLICATION. THE BOARD HAS, THEREFORE, WHERE EMPLOYEES IN THE CONSTRUCTION INDUSTRY ARE INVOLVED, DESCRIBED THE APPROPRIATE BARGAINING UNIT IN TERMS OF THE TRADES ON THE JOB ON THE DATE OF THE MAKING OF THE APPLICATIONS, SEE, FOR EXAMPLE, WINTER & SON CASE, OLRB MONTHLY REPORT, FEBRUARY 1967, P. 889, 890. IT FOLLOWS THAT IF THE BOARD WERE TO ACCEDE TO THE AGREEMENT OF THE APPLICANT AND THE RESPONDENT AND DETERMINE A BARGAINING UNIT, WITH RESPECT TO THE RESPONDENT'S EMPLOYEES IN THE CONSTRUCTION INDUSTRY, IN TERMS OF "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF COPPER CLIFF", THE BOARD'S REMARKS ON JURISDICTIONAL DISPUTES WOULD APPLY WITH EVEN GREATER FORCE.

9. WHILE THE BOARD DOES TAKE INTO CONSIDERATION THE AGREEMENT OF THE PARTIES IN DETERMINING WHAT IS AN APPROPRIATE BARGAINING UNIT, IT WILL NOT GIVE EFFECT TO SUCH AGREEMENT WHERE IN THE OPINION OF THE BOARD IT WOULD BE CONTRARY TO ITS ESTABLISHED FUNDAMENTAL POLICIES AS DESCRIBED ABOVE, SEE BARBER-ELLIS OF CANADA LIMITED CASE, OLRB MONTHLY REPORT, OCTOBER 1961, P. 248.

10. HAVING REGARD TO THE FOREGOING AND BY ANALOGY THEREWITH, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT: (A) ITS REPAIR SHOP AND GRAVEL PIT IN WATERS TOWNSHIP IN THE DISTRICT OF SUDBURY AND (B) THE QUARTZ QUARRY OF CARMAN CONSTRUCTION LIMITED IN DIEPPE TOWNSHIP IN THE DISTRICT OF SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE SUDBURY CONSTRUCTION ASSOCIATION MADE ON AUGUST 6, 1969, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN PARAGRAPH 10, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 21, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 10.

13. THE BOARD FURTHER FINDS, HAVING REGARD TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, THAT ALL CONSTRUCTION LABOURERS AT COPPER CLIFF AND ALL EMPLOYEES OF THE RESPONDENT AT COPPER CLIFF, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

14. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN PARAGRAPH 13, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 21, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

15. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 13.

16. THE BOARD ALSO FURTHER FINDS, HAVING REGARD TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, THAT ALL TRUCK DRIVERS IN THE TOWNSHIP OF MCDOUGALL AND ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF MCDOUGALL IN THE DISTRICT OF PARRY SOUND, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

17. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 16,

AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 21, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

18. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 16. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

19. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

20. THE MATTER IS REFERRED TO THE REGISTRAR.

21. THE BOARD ALSO FURTHER FINDS, HAVING REGARD TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

22. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 21, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 21, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

23. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 21. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

24. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

25. THE MATTER IS REFERRED TO THE REGISTRAR.

16976-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. CARMAN CONSTRUCTION LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: D. M. STOREY AND J. KEUHL FOR THE APPLICANT; CARMAN FIELDING AND DANI FIELDING FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 8, 1970.

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2. AT THE HEARING IN THIS MATTER, THE APPLICANT AND THE RESPONDENT AGREED THAT THE APPROPRIATE BARGAINING UNIT IN THIS APPLICATION FOR CERTIFICATION WOULD BE ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF COPPER CLIFF, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF.

3. THE RESPONDENT'S BUSINESS OPERATIONS CONSIST OF GENERAL CONTRACTING, EQUIPMENT RENTAL, OPEN PIT MINING IN QUARRIES AND MINING CONTRACT WORK. IN ADDITION, THE RESPONDENT OPERATES A REPAIR SHOP AND YARD IN WATERS TOWNSHIP. IT IS POSSIBLE TO DIVIDE THE RESPONDENT'S BUSINESS OPERATIONS INTO CONSTRUCTION INDUSTRY AND NON-CONSTRUCTION INDUSTRY OPERATIONS. IN ITS NON-CONSTRUCTION OPERATION, ON NOVEMBER 12, 1969, THE DATE OF THE MAKING OF THE APPLICATION, THE RESPONDENT EMPLOYED SEVENTEEN EMPLOYEES AT ITS REPAIR SHOP AND YARD IN WATERS TOWNSHIP; SEVEN EMPLOYEES AT GRAVEL PIT OPERATIONS IN WATERS TOWNSHIP; FOUR EMPLOYEES AT THE CREAN HILL OPEN PIT MINE IN DENISON TOWNSHIP; THREE EMPLOYEES AT ITS QUARTZ QUARRY IN DIEPPE TOWNSHIP; AND TWO FUEL TRUCK DRIVERS, ONE OF WHOM WORKED IN WATERS TOWNSHIP, SUDBURY, NEELON & GARSON TOWNSHIP, COPPER CLIFF, AND DRURY, DENISON & GRAHAM TOWNSHIP; AND THE OTHER OF WHOM WORKED IN THE AREAS DESCRIBED IMMEDIATELY ABOVE EXCEPT NEELON & GARSON TOWNSHIP. IN ITS CONSTRUCTION INDUSTRY OPERATION, ON NOVEMBER 12, 1969, THE DATE OF THE MAKING OF THE APPLICATION, THE RESPONDENT EMPLOYED FIFTEEN EMPLOYEES ON A CULVERT AND SEWER LINE JOB AT COPPER CLIFF IN A WORK FORCE COMPOSED OF LABOURERS, OPERATING ENGINEERS AND TRUCK DRIVERS; THIRTEEN EMPLOYEES ON SEWERS, WATERLINES AND FILL AND ONE EMPLOYEE GRADING ROADS IN WATERS TOWNSHIP IN A WORK FORCE COMPOSED OF LABOURERS, OPERATING ENGINEERS AND TRUCK DRIVERS; FIVE EMPLOYEES ON THE CHUBB LAKE HYDRO PROJECT AT THESSALON IN A WORK FORCE COMPOSED OF TRUCK DRIVERS AND A MECHANIC; AND ONE SHOVEL OPERATOR AT PARRY SOUND.

4. FOR THE REASONS GIVEN IN THE FIELDING CONSTRUCTION COMPANY CASE, BOARD FILE #16975-69-R, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT: (A) ITS REPAIR SHOP

AND YARD IN WATERS TOWNSHIP IN THE DISTRICT OF SUDBURY; (B) THE GRAVEL PIT OPERATIONS IN WATERS TOWNSHIP IN THE DISTRICT OF SUDBURY; (C) THE CREAN HILL OPEN PIT MINE IN DENISON TOWNSHIP IN THE DISTRICT OF SUDBURY; (D) ITS QUARTZ QUARRY IN DIEPPE TOWNSHIP IN THE DISTRICT OF SUDBURY AND (E) COPPER CLIFF AS FUEL TRUCK DRIVERS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAT FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN PARAGRAPH 4, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 21, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 4.

7. THE BOARD FURTHER FINDS, HAVING REGARD TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, THAT ALL CONSTRUCTION LABOURERS AND TRUCK DRIVERS AT COPPER CLIFF AND ALL EMPLOYEES OF THE RESPONDENT AT COPPER CLIFF, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMAN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 7, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 21, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 7. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 7 ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

10. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

12. THE BOARD FURTHER FINDS, HAVING REGARD TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, THAT ALL CONSTRUCTION LABOURERS AND TRUCK DRIVERS IN WATERS TOWNSHIP IN THE DISTRICT OF SUDBURY AND ALL EMPLOYEES OF THE RESPONDENT IN WATERS TOWNSHIP IN THE DISTRICT OF SUDBURY, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

13. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN PARAGRAPH 12, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 21, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

14. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 12.

15. THE BOARD FURTHER FINDS, HAVING REGARD TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, THAT ALL TRUCK DRIVERS AND MECHANICS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF THESSALON IN THE DISTRICT OF ALGOMA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

16. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN PARAGRAPH 15, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 21, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

17. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 15.

18. HAVING REGARD TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, THE APPLICATION, IN SO FAR AS IT RELATES TO THE SINGLE EMPLOYEE WHO WORKED AT PARRY SOUND ON THE DATE OF THE MAKING OF THE APPLICATION, IS DISMISSED.

17011-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. THE CORPORATION OF THE TOWNSHIP OF VALLEY EAST (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: H. A. HERRON AND ROBERT BRADY FOR THE APPLICANT; RICHARD LINDENBACH, EMILIEN LELIEVRE AND P. J. HAMILTON FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 6, 1970.

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3. THE APPLICANT CLAIMED THAT A BARGAINING UNIT EXPRESSED IN TERMS OF ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN CONSTRUCTION AND MAINTENANCE OF MUNICIPAL SERVICES, WITH EXCEPTIONS NOT HERE RELEVANT, WAS APPROPRIATE FOR COLLECTIVE BARGAINING. IT IS THE BOARD'S USUAL PRACTICE, HOWEVER, TO DESCRIBE BARGAINING UNITS OF OUTSIDE EMPLOYEES OF MUNICIPALITIES IN TERMS OF "ALL EMPLOYEES SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF" - SEE THE CORPORATION OF THE TOWNSHIP OF MARKHAM CASE, OLRB MONTHLY REPORT, AUGUST 1969, P. 592. AT THE HEARING IN THIS MATTER THE RESPONDENT INFORMED THE BOARD THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION WERE ALL OF ITS OUTSIDE EMPLOYEES APART FROM ITS FIRE DEPARTMENT. ACCORDINGLY, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. AT THE HEARING IN THIS APPLICATION ON DECEMBER 22, 1969, REPRESENTATIVE OF THE RESPONDENT PLACED BEFORE THE BOARD A STATEMENT OF DESIRE PURPORTING TO BE SIGNED BY 4 EMPLOYEES OF THE RESPONDENT IN OPPOSITION TO THIS APPLICATION. THE TERMINAL DATE FIXED FOR THIS APPLICATION WAS DECEMBER 12, 1969. THE STATEMENT OF DESIRE THEREFORE WAS NOT FILED WITH THE BOARD IN ACCORDANCE WITH SECTION 48 OF THE BOARD'S RULES OF PROCEDURE AND IS THEREFORE NOT ACCEPTED BY THE BOARD.

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6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

17012-69-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) v. O. & W. ELECTRONICS LIMITED (RESPONDENT) v. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (INTERVENER).

BEFORE: J. D. O'Shea, Vice-Chairman, and Board Members O. Hodges and H. F. Irwin.

APPEARANCES AT THE HEARING: R. Russell and A. Jenkyn for the applicant, D. Churchill-Smith for the respondent, Daniel Dean and William Fraser for the intervener.

DECISION OF THE BOARD: January 15, 1970.

1. This application for certification was made on November 24, 1969, and the applicant requested that a pre-hearing representation vote be taken.

2. Item 5 of the application reads as follows:

> 5. The name and address of any trade union or council of trade unions known to the applicant as claiming to be the bargaining agent of, or as claiming to represent, any employees who may be affected by this application:
>
> None at this time. We understand the International Association of Machinists were certified for the employees of this company in April 1962, but that no collective agreement was concluded between the parties

3. The intervener in its intervention stated, in part, as follows:

> 2. The intervener is a trade union or council of trade unions that,
>
> (A) represents employees; or
> (B) is the bargaining agent of employees who may be affected by the application,
>
> 4. The intervener submits with this intervention the following documentary evidence:
>
> Collective Agreement signed the 2nd day of November, 1962, Effective October 29th, 1962.

> THE AGREEMENT TO CONTINUE FROM YEAR TO YEAR, AFTER THE SECOND YEAR, IF NO NOTICE IS GIVEN BY EITHER PARTY TO TERMINATE OR ENTER INTO NEGOTIATIONS FOR THE PURPOSE OF AMENDING AS PER ARTICLE XXVI OF THE COLLECTIVE AGREEMENT.

4. AT THE PRE-HEARING VOTE MEETING, THE INTERVENER OBJECTED TO THE MEETING PROCEEDING, ON THE GROUNDS THAT THE APPLICANT MADE ITS APPLICATION ON THE PREMISE THAT THERE WAS NO COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER. THE INTERVENER MADE REFERENCE TO A COLLECTIVE AGREEMENT THAT HAD BEEN SIGNED BY THE RESPONDENT AND THE INTERVENER ON THE 2ND DAY OF NOVEMBER, 1962. ARTICLE XXVI OF THE AGREEMENT READS AS FOLLOWS:

> THIS AGREEMENT SHALL BE IN EFFECT FOR TWO (2) YEARS FROM OCTOBER 29TH, 1962 AND SHALL CONTINUE FROM YEAR TO YEAR AFTER THAT DATE UNLESS EITHER PARTY GIVES NOTICE IN WRITING OF ITS INTENTION TO TERMINATE THE AGREEMENT OR TO ENTER INTO NEGOTIATIONS FOR THE PURPOSE OF AMENDING THE AGREEMENT WITHIN A PERIOD OF NOT LESS THAT 30 DAYS AND NOT MORE THAN 60 DAYS PRIOR TO ANY SUCH YEARLY DATE OF TERMINATION.

5. THE INTERVENER TOOK THE POSITION THAT THE EMPLOYEES COVERED BY THE AGREEMENT HAD FULL OPPORTUNITY TO TERMINATE THE BARGAINING RIGHTS BUT HAD FAILED TO TAKE ADVANTAGE OF THE OPPORTUNITY. THE INTERVENER ARGUED THAT THE AGREEMENT WAS STILL IN FORCE AND THAT THE BOARD SHOULD DISMISS THE APPLICATION ON THE GROUNDS THAT THE APPLICATION IS UNTIMELY.

6. ALTHOUGH THE EXAMINER GAVE THE INTERVENER AN OPPORTUNITY TO DO SO, THE INTERVENER REFUSED TO ADVISE WHETHER THERE HAD BEEN ANY HISTORY OF COLLECTIVE BARGAINING BETWEEN THE RESPONDENT AND THE INTERVENER SINCE THE AGREEMENT WAS SIGNED IN 1962. AT THE EXAMINER'S HEARING, THE RESPONDENT INDICATED THAT IT DID NOT WISH TO TAKE SIDES IN THE DISPUTE BETWEEN THE TWO UNIONS.

7. THE BOARD DIRECTED THAT THE REGISTRAR LIST THIS MATTER FOR HEARING TO PROVIDE AN OPPORTUNITY TO THE INTERVENER AND THE RESPONDENT "TO SHOW CAUSE WHY THE INTERVENER SHOULD NOT BE DECLARED AS HAVING ABANDONED ITS BARGAINING RIGHTS IN THIS MATTER".

8. AT THE HEARING BEFORE THE BOARD, THE INTERVENER ARGUED THAT THE ONUS WAS ON THE APPLICANT TO ESTABLISH THE FACT OF ABANDONMENT. THE INTERVENER FURTHER ARGUED THAT THE BOARD WAS "ASKING THE INTERVENER TO INCRIMINATE ITSELF" WHEN THE BOARD REQUIRED THE INTERVENER TO SHOW CAUSE WHY THE INTERVENER SHOULD NOT BE DECLARED AS

HAVING ABANDONED ITS BARGAINING RIGHTS. IT WAS THE INTERVENER'S POSITION THAT SINCE THE APPLICANT HAD BEEN UNDER AN ERRONEOUS IMPRESSION THAT THERE WAS NO COLLECTIVE AGREEMENT CONCLUDED BETWEEN THE RESPONDENT AND THE INTERVENER, IT SHOULD NOT BE INCUMBENT ON THE INTERVENER TO ESTABLISH THE APPLICANT'S CASE IN VIEW OF THE FACT THAT IT IS CLEAR THAT A COLLECTIVE AGREEMENT HAD BEEN CONCLUDED BY THE RESPONDENT AND THE INTERVENER IN 1962.

9. THE INTERVENER ALSO TOOK THE POSITION THAT THERE WAS NO SECTION IN THE COLLECTIVE AGREEMENT WHICH WOULD REQUIRE A TRADE UNION IN THESE CIRCUMSTANCES TO ESTABLISH THAT IT HAD NOT ABANDONED ITS BARGAINING RIGHTS.

10. WHILE THE LABOUR RELATIONS ACT CONTEMPLATES THAT A TRADE UNION MAY ABANDON ITS BARGAINING RIGHTS (SEE SECTION 43, SUBSECTION 6), THERE IS NO SPECIFIC PROCEDURE DEFINED IN THE LABOUR RELATIONS ACT OR THE BOARD'S RULES OF PROCEDURE WHEREBY A TRADE UNION CAN TAKE STEPS TO ABANDON ITS BARGAINING RIGHTS. ABANDONMENT OF BARGAINING RIGHTS IS A QUESTION OF FACT. IF A TRADE UNION HAS ABANDONED ITS BARGAINING RIGHTS THEN SUCH BARGAINING RIGHTS CEASE TO EXIST. WHEN A TRADE UNION IS CERTIFIED AS A BARGAINING AGENT IT IS INCUMBENT ON THAT TRADE UNION TO ACTIVELY PROMOTE THE BARGAINING RIGHTS WHICH IT RECEIVES THROUGH CERTIFICATION. THIS FACT IS EVIDENT FROM THE PROVISIONS OF SECTION 45 OF THE ACT WHICH PERMITS AN APPLICATION FOR TERMINATION TO BE MADE IF A TRADE UNION ALLOWS SIXTY DAYS TO ELAPSE FOLLOWING CERTIFICATION DURING WHICH PERIOD IT DOES NOT ATTEMPT TO BARGAIN WITH THE EMPLOYER OR IF A TRADE UNION FAILS TO GIVE NOTICE UNDER SECTION 40 FOR RENEWAL OF A COLLECTIVE AGREEMENT.

11. IF A TRADE UNION FAILS TO ACT AS A BARGAINING AGENT AND SLEEPS ON ITS BARGAINING RIGHTS FOR AN EXTENDED PERIOD OF TIME, IT MAY BE SAID TO HAVE ABANDONED ITS BARGAINING RIGHTS SINCE IT IS EXPECTED THAT A TRADE UNION WILL ACTIVELY PROMOTE THE BARGAINING RIGHTS WHICH IT HAS RECEIVED. THE QUESTION OF ABANDONMENT IS ONE OF FACT (OR PERHAPS, MORE CORRECTLY, IS A MIXED QUESTION OF FACT AND LAW) WHICH MUST BE ESTABLISHED FROM ALL THE EVIDENCE. AS WAS STATED AT THE HEARING, IF ALL THE EVIDENCE RELATING TO THE INTERVENER'S BARGAINING RIGHTS WAS THAT A COLLECTIVE AGREEMENT WAS ENTERED INTO IN THE LATTER PART OF 1962 WHICH, ON ITS FACE, PURPORTED TO RENEW ITSELF FROM TIME TO TIME THEREAFTER IN PERPETUITY, AND THERE WAS NO OTHER EVIDENCE OF AN ACTIVE BARGAINING RELATIONSHIP EXISTING BETWEEN 1962 AND THE DATE OF THE MAKING OF THIS APPLICATION, THE BOARD WOULD NOT HESITATE IN MAKING A FINDING OF ABANDONMENT ON THE PART OF THE INTERVENER. (IN THIS REGARD, SEE N. W. CLAYTON SHEET METAL AND HEATING CO. LTD. CASE, OLRB MONTHLY REPORT, APRIL 1967, P. 69, AND RAINEE MANUFACTURING PRODUCTS LIMITED CASE, OLRB MONTHLY REPORT, NOVEMBER 1967, P. 796.) NEEDLESS TO SAY, HOWEVER, THE FACT THAT THE AGREEMENT HAD BEEN ENTERED INTO IN 1962 WOULD NOT NECESSARILY

CAUSE THE BOARD TO REACH THE CONCLUSION OF ABANDONMENT IF THERE WERE OTHER EXTENUATING CIRCUMSTANCES. IF, FOR EXAMPLE, THE INTERVENER HAD CONTINUED TO HOLD UNION MEETINGS WITH THE EMPLOYEES IN THE BARGAINING UNIT, HAD REGULARLY PROCESSED GRIEVANCES THROUGH THE EXTENDED PERIOD INVOLVED, HAD CONTINUED TO RECEIVE UNION DUES, AND HAD MAINTAINED ITS MEMBERSHIP AMONG THE EMPLOYEES IN THE BARGAINING UNIT, OR HAD TAKEN SIMILAR ACTIONS TO ASSERT ITS RIGHTS AS THE BARGAINING AGENT FOR THE EMPLOYEES, THE BOARD WOULD NOT MAKE A FINDING OF ABANDONMENT BECAUSE THERE WOULD NOT, IN FACT, BE AN ABANDONMENT IN SUCH INSTANCE.

12. UNDER THE PROVISIONS OF SECTION 79(1) OF THE ACT, THE BOARD HAS EXCLUSIVE JURISDICTION "TO DETERMINE ALL QUESTIONS OF FACT OR LAW THAT ARISE IN ANY MATTER BEFORE IT". THE BOARD IS THEREFORE CLEARLY EMPOWERED TO MAKE A FINDING OF ABANDONMENT OF BARGAINING RIGHTS IF SUCH QUESTION ARISES IN ANY PROCEEDING.

13. ONCE BARGAINING RIGHTS HAVE BEEN ABANDONED, THEY CANNOT BE UNILATERALLY REVIVED BY THE TRADE UNION. IF BARGAINING RIGHTS CEASE TO EXIST THROUGH ABANDONMENT, THERE ARE NO RIGHTS THAT CAN BE ASSERTED BY A UNION.

14. AT THE HEARING IN THIS MATTER, HOWEVER, THE INTERVENER WAS VERY FORTHRIGHT IN ITS ADMISSIONS THAT THERE HAD BEEN NO ACTIVE BARGAINING RELATIONSHIP WITH THE RESPONDENT SINCE THE AGREEMENT WAS SIGNED IN 1962. NONE OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE INTERVENER AT THE PRESENT TIME, THE INTERVENER HAS MADE NO REPRESENTATIONS ON BEHALF OF THE EMPLOYEES OF THE RESPONDENT SINCE 1962, THERE HAVE BEEN NO GRIEVANCES LODGED NOR ARBITRATIONS BROUGHT UNDER THE PROVISIONS OF THE AGREEMENT THAT WAS ENTERED INTO, AND THERE HAS BEEN NO REQUEST BY THE UNION FOR ANY AMENDMENTS TO THE COLLECTIVE AGREEMENT SINCE 1964. THE INTERVENER HAS ALSO FAILED TO ATTEMPT TO ENFORCE THE MAINTENANCE OF MEMBERSHIP PROVISIONS OF THE COLLECTIVE AGREEMENT.

15. SINCE THE INTERVENER HAS, FOR A SUBSTANTIAL PERIOD OF TIME, FAILED TO TAKE ANY STEPS TO ASSERT THE BARGAINING RIGHTS WHICH IT HELD, THE BOARD CONCLUDES THAT THE TRADE UNION HAD , PRIOR TO NOVEMBER 24, 1969, ABANDONED ITS BARGAINING RIGHTS WITH RESPECT TO THE EMPLOYEES OF THE RESPONDENT WITH WHOM WE ARE HERE CONCERNED. ON THE EVIDENCE BEFORE US, THE BOARD THEREFORE DECLARES THAT THE INTERVENER NO LONGER REPRESENTS THE EMPLOYEES OF THE RESPONDENT FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT.

16. IN MAKING THIS FINDING WE ARE UNABLE TO AGREE WITH THE INTERVENER THAT THE ONUS SHOULD HAVE BEEN ON THE APPLICANT TO ESTABLISH THE FACT THAT THE INTERVENER HAD ABANDONED ITS BARGAINING RIGHTS. SINCE IT WAS THE INTERVENER WHO ASSERTED THAT IT DID

HAVE BARGAINING RIGHTS WHICH WOULD HAVE MADE ITS APPLICATION UNTIMELY, IT WAS INCUMBENT ON THE INTERVENER TO ESTABLISH THAT THOSE BARGAINING RIGHTS EXISTED. ON THE EVIDENCE BEFORE US, FOR THE REASONS SET OUT ABOVE, WE ARE UNABLE TO FIND THAT THE INTERVENER HAD ANY BARGAINING RIGHTS WHICH WOULD HAVE CAUSED THE APPLICANT'S APPLICATION TO BE UNTIMELY AND WE SPECIFICALLY FIND THAT THE AGREEMENT WHICH WAS ENTERED INTO ON NOVEMBER 2, 1962 IS NOT A BAR TO THIS APPLICATION.

17. WE THEREFORE DISMISS THE INTERVENTION IN THIS MATTER.

18. IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF THE APPLICANT AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

19. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD DIRECTS THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

> ALL EMPLOYEES OF THE RESPONDENT LOCATED AT ITS PLANT AT 1335 LAWRENCE AVENUE EAST AND 31 RAILSAID AVENUE, DON MILLS, ONTARIO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, CHEMISTS, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS HIRED DURING SCHOOL VACATION PERIODS AND STUDENTS ENGAGED IN CONNECTION WITH A UNIVERSITY CO-OPERATIVE TRAINING PROGRAMME.

20. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE 3RD DAY OF DECEMBER, 1969 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYEMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 3RD DAY OF DECEMBER, 1969 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

21. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

22. THE MATTER IS REFERRED TO THE REGISTRAR.

17013-69-R: NURSES' ASSOCIATION OSHAWA GENERAL HOSPITAL (APPLICANT) V. OSHAWA GENERAL HOSPITAL (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: D.F.O. HERSEY, MISS MARIE FLOOD, MISS JEAN T. SHORTT FOR THE APPLICANT; S. D. BOWMAN, SLADE NIX, K. PAUL FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 21, 1970.

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2. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT INITIALLY PROPOSED A BARGAINING UNIT CONSISTING OF ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT IN A FULL-TIME OR PART-TIME CAPACITY. AT THE HEARING IN THIS MATTER THE RESPONDENT PROPOSED THREE SEPARATE BARGAINING UNITS FOR FULL-TIME GRADUATE AND REGISTERED NURSES, FOR REGISTERED AND GRADUATE NURSES EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND FOR REGISTERED AND GRADUATE NURSES WHO ARE CASUAL EMPLOYEES. THESE CASUAL EMPLOYEES ARE REGISTERED AND GRADUATE NURSES EMPLOYED ON AN INTERMITTENT BASIS WITH NO REGULARILY OF EMPLOYMENT OR HOURS WORKED AND WHO WORKED FOR THE RESPONDENT AS AND WHEN REQUIRED. IN THE MAIN, THESE CASUAL EMPLOYEES ARE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK. THE APPLICANT SUBSEQUENTLY ADOPTED THE POSITION THAT IN THE LIGHT OF THE REPRESENTATIONS OF THE RESPONDENT THE BOARD SHOULD FIND TWO APPROPRIATE BARGAINING UNITS, ONE FOR THE FULL-TIME REGISTERED AND GRADUATE NURSES AND THE OTHER FOR THE REGISTERED AND GRADUATE NURSES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK.

3. IT IS THE BOARD'S POLICY WITH RESPECT TO PERSONS CLASSIFIED BY THE RESPONDENT AS CASUAL EMPLOYEES TO DETERMINE WHETHER THEY ARE EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK OR WHETHER THEY ARE EMPLOYED FOR MORE THAN 24 HOURS PER WEEK. THE RESPONDENT'S EMPLOYEES MUST FALL INTO ONE OF THESE TWO CATEGORIES. THERE IS NO THIRD CATEGORY FOR THOSEPERSONS REFERRED TO AS CASUAL EMPLOYEES - SEE CENTRE GREY GENERAL HOSPITAL CASE, OLRB MONTHLY REPORTS, MARCH 1968, P. 1172, AND SYDENHAM DISTRICT HOSPITAL CASE, OLRB MONTHLY REPORTS, MAY 1967, P. 135.

4. IN ORDER TO ASCERTAIN THE NUMBER OF PERSONS, DESCRIBED BY THE RESPONDENT AS CASUAL EMPLOYEES, FOR THE PURPOSE OF ESTABLISING THE MEMBERSHIP POSITION OF THE APPLICANT, THE BOARD FINDS THAT ALL REGISTERED AND GRADUATE NURSES WHO WORKED ON AT LEAST ONE DAY DURING THEPERIOD FROM SEPTEMBER 25, 1969, TO NOVEMBER 24, 1969, BOTH DATES INCLUSIVE, SHOULD BE INCLUDED FOR THE PURPOSES OF THE COUNT. IN THIS CONNECTION REFERENCE MAY BE HAD TO THE CANADIAN PACIFIC RAILWAY COMPANY, ROYAL YORK HOTEL CASE, OLRB MONTHLY REPORTS, MAY 1960, P. 65 AND TO THE BROCKVILLE GENERAL HOSPITAL CASE, OLRB MONTHLY REPORTS JANUARY 1967, P. 776. THE BOARD FINDS

THAT 119 PERSONS, DESCRIBED BY THE RESPONDENT AS CASUAL EMPLOYEES, WORKED FOR AT LEAST ONE DAY DURING THE PERIOD FROM SEPTEMBER 25, 1969, TO NOVEMBER 24, 1969, BOTH DATES INCLUSIVE.

5. IT NOW BECOMES NECESSARY FOR THE BOARD TO DETERMINE WHICH OF THESE 119 PERSONS ARE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND WHICH PERSONS ARE EMPLOYED FOR MORE THAN 24 HOURS PER WEEK. IT HAS BEEN THE BOARD'S EXPERIENCE THAT IT WOULD BE USEFUL TO CONSIDER THE PERIOD OF SEVEN WEEKS IMMEDIATELY PRECEDING THE MAKING OF AN APPLICATION FOR CERTIFICATION AS BEING A MANAGEABLE REPRESENTATIVE PERIOD IN THE VAST MAJORITY OF CASES. THEREFORE, IF SUCH REPRESENTATIVE PERIOD IS USED AND A PERSON WAS EMPLOYED FOR FOUR OR MORE OF THE SEVEN WEEKS UNDER CONSIDERATION FOR NOT MORE THAN 24 HOURS PER WEEK, THE BOARD WOULD THEN BE IN A POSITION TO FIND THAT THE PERSON WAS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK. IF, ON THE OTHER HAND, A PERSON WAS EMPLOYED FOR FOUR OR MORE OF THE SEVEN WEEKS UNDER CONSIDERATION FOR MORE THAN 24 HOURS PER WEEK, THE BOARD WOULD BE ABLE TO FIND THAT THE PERSON PROPERLY BELONGS IN THE "FULL-TIME" BARGAINING UNIT, SEE SYDENHAM DISTRICT HOSPITAL CASE, SUPRA. APPLYING THE ABOVE EXPERIENCE TO THE PRESENT CASE, THE BOARD FINDS THAT 5 PERSONS ARE INCLUDED IN THE "FULL-TIME" BARGAINING UNIT AND THAT THE REMAINING 114 PERSONS WERE REGULARLY EMPLOYED FOR NOT MORE THAT 24 HOURS PER WEEK.

6 THE BOARD THEREFORE FURTHER FINDS THAT ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT OSHAWA ENGAGED IN NURSING CARE AND IN TEACHING, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE AND THOSE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE BOARD FINDS THAT FOR THE PURPOSES OF THE COUNT THERE WERE 239 PERSONS IN THE BARGAINING UNIT DEFINED IN PARAGRAPH 6 AND THAT THE APPLICANT HAD FILED MEMBERSHIP EVIDENCE OF THE TYPE ANNOUNCED AT THE HEARING IN THIS MATTER ON BEHALF OF 186 OF THESE PERSONS. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FITY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN PARAGRAPH 6, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 3, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT DEFINED IN PARAGRAPH 6.

BY A PERFORATED LINE. ON THE RECEIPT PORTION PROVISION IS MADE FOR ACKNOWLEDGING THE DATE AND RECEIPT OF A PAYMENT OF ONE DOLLAR BY A COLLECTOR. THE APPLICATION CARD AND THE RECEIPT PORTION EACH BEAR THE SIGNATURE OF ROSS L. ARMSTRONG, AN INTERNATIONAL REPRESENTATIVE OF THE APPLICANT, AS THE COLLECTOR OF ONE DOLLAR. ON THE RECEIPT PORTION THERE IS WRITTEN IN BY HAND "KEEP THIS" AND ON THE APPLICATION PORTION TWO SMALL "X"'S HAVE BEEN WRITTEN IN TO DRAW TO THE ATTENTION OF A POTENTIAL APPLICANT FOR MEMBERSHIP WHERE HE OR SHE SHOULD SIGN. THE PRINTED MATTER ON THIS APPLICATION FOR MEMBERSHIP CARD IS IN IDENTIAL FORM TO THOSE SUBMITTED BY THE APPLICANT AS EVIDENCE OF MEMBERSHIP IN THIS APPLICATION. HOWEVER, THE APPLICATION AND RECEIPT PORTIONS OF THE MEMBERSHIP CARD FILED BY THE RESPONDENT DO NOT BEAR ANY OTHER NAMES, SIGNATURES OR DATES. COUNSEL FOR THE RESPONDENT STATED THAT THIS MEMBERSHIP CARD HAD BEEN SENT BY MAIL TO ONE OF THE RESPONDENT'S EMPLOYEES AND TOOK THE POSITION THAT WHERE A DOCUMENT IS FILED WHICH CLAIMS THAT MONEY HAS BEEN RECEIVED, THEN IT CASTS A DOUBT ON ALL THE MEMBERSHIP EVIDENCE AND LEADS TO AN INFERENCE THAT OTHER IRREGULARITIES HAVE TAKEN PLACE. COUNSEL FOR THE RESPONDENT ARGUED THAT AN EXPLANATION SHOULD BE GIVEN BY THE APPLICANT SINCE THERE WAS NO DISCLOSURE BY THE APPLICANT IN FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS. HOWEVER, COUNSEL FOR THE RESPONDENT ADMITTED THAT HE DID NOT KNOW OF ANY INSTANCE OF NON-PAYMENT AFFECTING THIS APPLICATION FOR CERTIFICATION. THE PERSON TO WHOM THE APPLICATION AND RECEIPT FOR MEMBERSHIP WERE SENT RESIDES OUTSIDE METROPOLITAN TORONTO. THE RESPONDENT'S PLANT AFFECTED BY THIS APPLICATION FOR CERTIFICATION IS LOCATED IN METROPOLITAN TORONTO. THE APPLICANT DENIED THE ALLEGATIONS OF IRREGULARITIES IN ITS MEMBERSHIP EVIDENCE AND STATED THAT ONLY ONE OF THE RESPONDENT'S EMPLOYEES WAS SOLICITED FOR MEMBERSHIP BY WAY OF THE MAILS. THE APPLICANT CORRECTLY IDENTIFIED THE NAME OF THE EMPLOYEE TO WHOM THE LETTER AND MEMBERSHIP HAD BEEN SENT. IN FACT, THE APPLICANT DID NOT SUBMIT A MEMBERSHIP CARD FOR THE EMPLOYEE WHO HAD BEEN CANVASSED THROUGH THE MAILS TO JOIN THE APPLICANT. THE BOARD FINDS THAT THE ALLEGATIONS OF THE RESPONDENT ARE UNSUPPORTED BY ANY EVIDENCE, WHICH WOULD ENABLE THE BOARD TO DRAW THE INFERENCES SUGGESTED BY THE RESPONDENT. THE ALLEGATIONS OF THE RESPONDENT ARE HEREBY DISMISSED. THE BOARD NOTES THAT IT HAS ACCEPTED MEMBERSHIP EVIDENCE SECURED BY THE USE OF THE MAILS, SEE CANADIAN GYPSUM COMPANY LIMITED CASE, OLRB MONTHLY REPORTS NOVEMBER, 1961, P. 280. IN THE INSTANT CASE THERE IS NO NEED FOR THE BOARD TO CONSIDER WHETHER AN APPLICANT SHOULD DISCLOSE THE FACT OF HAVING CANVASSED MEMBERSHIP BY THE USE OF THE MAILS, SINCE THERE IS NO EVIDENCE BEFORE THE BOARD THAT ANY OF THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT WAS IN FACT SECURED IN THIS WAY.

9. THE BOARD THEREFORE FURTHER FINDS THAT ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT OSHAWA ENGAGED IN NURSING CARE AND IN TEACHING REGULARLY EMPLOYED FOR NOT MORE THAT 24 HOURS PER WEEK, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. THE BOARD FINDS THAT FOR THE PURPOSES OF THE COUNT THERE WERE 179 PERSONS IN THE BARGAINING UNIT DEFINED IN PARAGRAPH 9 AND THAT THE APPLICANT HAD FILED MEMBERSHIP EVIDENCE OF THE TYPE ANNOUNCED AT THE HEARING ON BEHALF OF 99 OF THESE PERSONS. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN PARAGRAPH 9, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 3, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT DEFINED IN PARAGRAPH 9.

17037-69-R: INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS (APPLICANT) v. COOPER-WEEKS LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: ROSS L. ARMSTRONG, GEORGE SMITH, AUBREY GOLDEN FOR THE APPLICANT; JOHN P. SANDERSON, JACK COOPER FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 19, 1970.

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2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT 501 ALLIANCE AVENUE IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. AT THE HEARING IN THIS MATTER, COUNSEL FOR THE RESPONDENT FILED WITH THE BOARD AN APPLICATION FOR MEMBERSHIP IN THE APPLICANT TOGETHER WITH A RECEIPT PORTION ATTACHED THERETO

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5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

17061-69-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) v. LEWIS MOTORS (OTTAWA) LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: J. P. NELLIGAN AND J. LEVIA FOR THE APPLICANT, A. J. CLARK AND K. A. MURCHISON FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 7, 1970.

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2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND SALESMEN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. COUNSEL FOR THE RESPONDENT SUBMITS THAT THIS APPLICATION MUST BE DISMISSED BECAUSE THE CONSTITUTION OF THE APPLICANT ONLY PROVIDES FOR MEMBERSHIP IN LOCALS OF THE APPLICANT AND NOT IN THE PARENT NATIONAL BODY ITSELF. COUNSEL FOR THE APPLICANT, ON THE OTHER HAND, SUBMITS THAT THE CONSTITUTION, IN FACT, DOES CONTEMPLATE THE APPLICANT PARENT UNION TAKING PERSONS INTO MEMBERSHIP AND THAT IT HAS BEEN THE REGULAR PAST PRACTICE OF THE APPLICANT TO DO SO.

4. IN SUPPORT OF HIS CONTENTION, COUNSEL FOR THE RESPONDENT REFERRED THE BOARD TO SECTIONS C, F AND J OF ARTICLE 3 OF THE APPLICANT'S CONSTITUTION. ARTICLE 3 IS TITLED "CONVENTION". SECTION C PROVIDES, IN PART, THAT IN ORDER TO BE SEATED AT A CONVENTION, A LOCAL DELEGATE MUST BE A MEMBER OF THE LOCAL HE REPRESENTS. SECTION F PROVIDES THAT THE NUMBER OF MEMBERS IN GOOD STANDING IN ANY LOCAL AS SHOWN ON THE RECORDS OF THE NATIONAL OFFICE AS OF A DATE NINETY DAYS PRIOR TO THE OPENING OF THE CONVENTION SHALL BE THE BASIS OF DETERMINING THE NUMBER OF DELEGATES TO WHICH A LOCAL IS ENTITLED. SECTION J PROVIDES, IN PART, THAT TO BE ELIGIBLE FOR ELECTION AS A REGIONAL VICE-PRESIDENT, A CANDIDATE MUST BE A MEMBER OF A LOCAL UNDER THE JURISDICTION OF THE REGIONAL COMMITTEE FOR WHICH HE IS NOMINATED.

5. COUNSEL FOR THE RESPONDENT ALSO CITED SECTION B OF ARTICLE 5 OF THE APPLICANT'S CONSTITUTION TITLED "MEMBERSHIP".

THAT SECTION PROVIDES THAT MEMBERSHIP MAY BE ACQUIRED BY SUBMISSION OF AN APPLICATION FORM PROVIDED BY THE NATIONAL OFFICE WHICH MUST BE ACCOMPANIED BY THE ENTRANCE FEE. THE SECTION FURTHER PROVIDES THAT THE APPLICATION MUST BE SPONSORED BY NOT LESS THAN TWO MEMBERS IN GOOD STANDING OF THE LOCAL IN WHICH MEMBERSHIP IS SOUGHT, EXCEPT WHEN A NEW LOCAL IS BEING CHARTERED. COUNSEL ALSO REFERRED THE BOARD TO SECTION A (10) OF ARTICLE 8 OF THE APPLICANT'S CONSTITUTION WHICH PROVIDES THAT THE NATIONAL PRESIDENT SHALL HAVE AUTHORITY, NOTWITHSTANDING THE PROVISIONS OF ARTICLE 5, SECTION B, TO ASSIGN NEWLY ORGANIZED GROUPS INTO MEMBERSHIP IN ESTABLISHED LOCALS.

6. COUNSEL FOR THE APPLICANT, IN SUPPORT OF HIS POSITION, REFERRED TO SECTION A (1) AND (2) OF ARTICLE 19 OF THE CONSTITUTION TITLED "LOCALS". SECTION A(1) PROVIDES THAT "WORKERS WHO ARE MEMBERS OF OR ELIGIBLE FOR MEMBERSHIP IN THE BROTHERHOOD, MAY APPLY FOR A CHARTER AS A LOCAL". SECTION A(2) PROVIDES THAT APPLICATIONS FOR CHARTERS SHALL BE MADE TO THE NATIONAL PRESIDENT AND THAT IF HE APPROVES OF THE APPLICATION, A CHARTER IS ISSUED.

7. ACCORDING TO THE EVIDENCE, THE PRACTICE THAT IS FOLLOWED IS THAT EMPLOYEES ARE SIGNED INTO MEMBERSHIP IN THE PARENT BODY AND A SPECIFIED NUMBERED LOCAL IS DESIGNATED AS THE LOCAL TO WHICH THE EMPLOYEES WILL SUBSEQUENTLY BELONG. THE EVIDENCE IS THAT IN THIS JURISDICTION, ONCE THE APPLICANT HAS BEEN CERTIFIED AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES, THESE EMPLOYEES, TOGETHER WITH EMPLOYEES IN OTHER CERTIFIED BARGAINING UNITS IN THE SAME AREA AND INDUSTRY, ELECT OFFICERS AND APPLY TO THE NATIONAL PRESIDENT FOR A CHARTER WHICH INVARIABLY IS GRANTED. HAVING BECOME MEMBERS OF THE LOCAL, THE EMPLOYEES CONCERNED AUTOMATICALLY ARE ACCORDED ALL OF THE RIGHTS AND OBLIGATIONS SET OUT IN THE CONSTITUTION.

8. WITH REFERENCE TO THE INSTANT APPLICATION, ACCORDING TO THE EVIDENCE, A NEW LOCAL, NUMBERED 517, WAS DESIGNATED BY THE APPLICANT AS BEING THE LOCAL TO WHICH THE EMPLOYEES IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE WOULD BECOME MEMBERS UPON CERTIFICATION BY THIS BOARD. FURTHER, THE INITIATION DUES COLLECTED FROM THE EMPLOYEES UPON THEIR COMPLETING AN APPLICATION FOR MEMBERSHIP IN THE APPLICANT WERE CREDITED ON THE APPLICANT'S BOOKS, FOR ACCOUNTING PURPOSES, AS BELONGING TO LOCAL NO. 517. COUNSEL FOR THE APPLICANT CITED TEN APPLICATIONS FOR CERTIFICATION IN WHICH THE BOARD HAS CERTIFIED THE APPLICANT AS BARGAINING AGENT FOR IDENTICAL OR VERY SIMILAR UNITS OF EMPLOYEES TO THAT FOUND TO BE APPROPRIATE IN THE INSTANT APPLICATION. ACCORDING TO THE EVIDENCE, IN ALL OF THE PREVIOUS CASES, SUBSEQUENT TO CERTIFICATION, THE EMPLOYEES ELECTED OFFICERS AND APPLIED FOR AND WERE GRANTED A LOCAL CHARTER PURSUANT TO ARTICLE 19 OF THE CONSTITUTION. COUNSEL FOR THE APPLICANT ADVISED THE BOARD THAT THE SAME PROCEDURE WOULD BE FOLLOWED SHOULD THE APPLICANT BE CERTIFIED IN THIS APPLICATION.

9. Counsel for the respondent argues that, pursuant to Article 8, the National President of the applicant can only assign newly organized groups into membership in established locals. Counsel submits that since only a local number has been designated and no charter has been granted, there is no established local to which the National President can assign the employees in the bargaining unit found to be appropriate.

10. Section A(1) of Article 19 provides that employees who are members of the Brotherhood may apply for a charter as a local. In our opinion, this provision is open to no other interpretation than that it was contemplated that employees would apply for membership in the applicant parent body and then apply for a charter as a local. As members of a local they are then accorded full privileges and obligations of membership under the Constitution. According to the evidence, this, in fact, has been the practice.

11. We would add that we do not find any conflict between section A(1) of Article 19 and section B of Article 5, which specifically makes an exception for the circumstance of a new local being chartered. Further, we do not see that section A(1) of Article 19 is in any way incompatible with the provisions of section A(10) of Article 8.

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13. A certificate will issue to the applicant.

17065-69-R: Canadian Brotherhood of Railway, Transport and General Workers (Applicant) v. SHANE DISTRIBUTORS LIMITED (Respondent).

BEFORE: J. H. Brown, Q.C., Alternate Chairman, and Board Members H. F. Irwin and P. J. O'Keeffe.

APPEARANCES AT THE HEARING: J. P. Nelligan and J. Levia for the applicant, J. D. Richard, F. Marchington and L. P. Durrett for the respondent.

DECISION OF THE BOARD: January 8, 1970.

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2. The Board further finds that all employees of the respondent in the Township of Gloucester, save and except foremen, persons above the rank of foreman, office staff, and salesmen, constitute a unit of employees of the respondent appropriate for collective bargaining.

3. Counsel for the respondent advised the Board that the respondent had ceased to do business on December 31, 1969. Counsel submitted that in this circumstance the Board should not certify the applicant. The Chairman of the panel informed counsel at the hearing that the Board dealt with applications for certification as of their date of making, which in the instant case was December 4, 1969, and that the applicant accordingly was entitled to certification provided that it had the required evidence of membership.

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5. A certicate will issue to the applicant.

17076-69-R: The Canadian Union of Public Employees (Applicant) v. THE CORPORATION OF THE CITY OF GALT (Respondent).

BEFORE: R. A. Furness, Vice-Chairman and Board Members E. Boyer and R. W. Teagle.

DECISION OF THE BOARD: January 30, 1970.

2. This is an application for certification affecting the employees of the respondent in its Parks and Recreation Department. The respondent and the Canadian Union of Public Employees, Local 579, are parties to a collective agreement effective from June 1, 1968, until May 1970 covering all hourly rated employees of the respondent employed in the Works Department, Traffic Department and the Construction Inspection Section and Cemetery Department. It was agreed by the applicant and the respondent that this application for certification affected all outside employees of the respondent not covered by the collective agreement referred to above. It is the usual practice of the Board to described bargaining units of outside employees of municipalities in terms of "all employees save and except foremen, persons above the rank of foreman and office staff". See THE CORPORATION OF THE TOWNSHIP OF MARKHAM case, OLRB Monthly Reports, August 1969, page 592. However, in the present application for certification the employees affected constitute the remaining outside employees of the respondent.

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4. Having regard to the circumstances of this application and to the agreement of the applicant and the respondent, the Board further finds that all employees of the respondent in its Parks and Recreation Department, save and except the Commissioner of Parks and Recreation, Assistant Directors of Recreation, Superintendent of Facilities, Superintendent of Parks, persons above

THESE RANKS AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

17122-69-R: UNITED STEELWORKERS OF AMERICA, C.I.O. (APPLICANT) v. ATLAS STEELS COMPANY A DIVISION OF RIO ALGOM MINES LIMITED (RESPONDENT) v. THE CANADIAN STEELWORKERS UNION, ATLAS DIVISION (INTERVENER #1) v. THE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 103 (INTERVENER #2).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JANUARY 21, 1970.

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2. THE APPLICANT HAS MADE AN APPLICATION FOR CERTIFICATION AND INTERVENER #2 HAS FILED AN INTERVENER'S APPLICATION FOR CERTIFICATION TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT CURRENTLY REPRESENTED BY INTERVENER #1 AND THE APPLICANT HAS REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

3. IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF THE APPLICANT AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN VOTING CONSTITUENCY #1 HEREINAFTER DESCRIBED WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

4. IT FURTHER APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF INTERVENER #2 AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN VOTING CONSTITUENCY #2 HEREINAFTER DESCRIBED WERE MEMBERS OF INTERVENER #2 AT THE TIME THE APPLICATION WAS MADE.

5. THE BOARD DIRECTS THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN VOTING CONSTITUENCY #1:

> ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN AND ABOUT THE COMPANY'S MANUFACTURING PLANT LOCATED AT WELLAND, ONTARIO, CANADA, BUT EXCLUDING ALL SALARIED EMPLOYEES, SECTION LEADERS, MAINTENANCE

> SUPERVISORS, MELTERS, AND ASSISTANT ROLLERS AND ROLLERS OF THE BLOOMING AND BAR MILLS OR ANY EMPLOYEE ACTING FULL-TIME IN A SUPERVISORY OR CONFIDENTIAL CAPACITY WHETHER ON SALARY OR HOURLY PAY, WATCHMEN AND MEMBERS OF THE PLANT POLICE FORCE AND FIRE DEPARTMENT.

6. ALL EMPLOYEES OF THE RESPONDENT IN VOTING CONSTITUENCY #1 ON THE 5TH DAY OF JANUARY, 1970 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 5TH DAY OF JANUARY, 1970 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

7. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND INTERVENER #1 IN VOTING CONSTITUENCY #1.

8. THE BOARD DIRECTS THAT ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS AND PUMP STATION OPERATORS EMPLOYED BY THE RESPONDENT AT WELLAND WILL BE PERMITTED TO VOTE IN VOTING CONSTITUENCY #1 AND THEIR BALLOTS BE SEGREGATED AND NOT COUNTED PENDING A FURTHER DIRECTION BY THE BOARD.

9. THE BOARD FURTHER DIRECTS THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN VOTING CONSTITUENCY #2:

> ALL STATIONARY ENGINEERS ANDHELPERS EMPLOYED IN THE RESPONDENT'S STEAM PLANT, SAVE AND EXCEPT CHIEF ENGINEER AND THOSE ABOVE THAT RANK, (THE ABOVE DESCRIPTION INCLUDES THE PUMP HOUSE SITUATED AT RIVER ROAD.) SITUATED IN WELLAND, ONTARIO.

10. ALL EMPLOYEES OF THE RESPONDENT IN VOTING CONSTITUENCY #2 ON THE 5TH DAY OF JANUARY, 1970 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 5TH DAY OF JANUARY, 1970 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

11. VOTERS WILL BE GIVEN A CHOICE BETWEEN INTERVENER #1 AND INTERVENER #2 IN VOTING CONSTITUENCY #2.

12. THE BOARD DIRECTS THAT ALL THE BALLOTS CAST BY ALL THOSE ELIGIBLE TO VOTE IN VOTING CONSTITUENCY #2 SHALL BE SEGREGATED AND NOT COUNTED PENDING A FURTHER DIRECTION BY THE BOARD.

13. THE BOARD FURTHER DIRECTS THAT THE BALLOT BOXES CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTES IN VOTING CONSTITUENCY #1 AND VOTING CONSTITUENCY #2 SHALL BE SEALED AND THE BALLOTS SHALL NOT BE COUNTED PENDING A FURTHER DIRECTION BY THE BOARD.

14. FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTES IN THIS MATTER, THE BOARD DIRECTS THE REGISTRAR TO LIST THIS MATTER FOR HEARING TO HEAR THE REPRESENTATIONS OF THE PARTIES CONCERNING THE APPROPRIATENESS OF THE BARGAINING UNIT PROPOSED BY INTERVENER #2 IN THIS MATTER.

15. WHILE THE APPLICANT HAS APPLIED FOR ALL EMPLOYEES CURRENTLY REPRESENTED BY THE INCUMBENT TRADE UNION, INTERVENER #2 ONLY SEEKS TO REPRESENT ALL STATIONARY ENGINEERS AND THEIR HELPERS AND PUMP STATION OPERATORS. BOTH THE APPLICANT AND INTERVENER #2 SEEK TO BE CERTIFIED AS BARGAINING AGENT FOR THE STATIONARY ENGINEERS, THEIR HELPERS AND PUMP STATION OPERATORS. IN THESE CIRCUMSTANCES AND SUBJECT TO A DETERMINATION AS TO WHETHER THE UNIT PROPOSED BY INTERVENER #2 IS APPROPRIATE FOR COLLECTIVE BARGAINING UNDER SECTION 6(2) OF THE LABOUR RELATIONS ACT, THE STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS AND PERSONS CLASSIFIED AS PUMP STATION OPERATORS WILL BE ENTITLED TO VOTE IN VOTING CONSTITUENCY #1 AND IN VOTING CONSTITUENCY #2. VOTING CONSTITUENCY #2 WHICH WILL ONLY INCLUDE THE STATIONARY ENGINEERS, PERSONS PRIMARILY ENGAGED AS THEIR HELPERS AND PERSONS CLASSIFIED AS PUMP STATION OPERATORS WILL BE GIVEN A CHOICE BETWEEN INTERVENER #2 AND INTERVENER #1 (THE INCUMBENT TRADE UNION). IN VOTING CONSTITUENCY #1 WHICH WILL INCLUDE ALL EMPLOYEES OF THE RESPONDENT, THE STATIONARY ENGINEERS, PERSONS PRIMARILY ENGAGED AS THEIR HELPERS AND PERSONS CLASSIFIED AS PUMP STATION OPERATORS WILL CAST A SEGREGATED BALLOT. IF THE BOARD FINDS THAT THE UNIT PROPOSED BY INTERVENER #2 IS APPROPRIATE AND THE MAJORITY OF STATIONARY ENGINEERS, PERSONS PRIMARILY ENGAGED AS THEIR HELPERS AND PERSONS CLASSIFIED AS PUMP STATION OPERATORS VOTE IN FAVOUR OF INTERVENER #2, THE SEGREGATED BALLOTS CAST BY SUCH EMPLOYEES IN VOTING CONSTITUENCY #1 WILL NOT BE COUNTED. IF, HOWEVER, THE MAJORITY OF STATIONARY ENGINEERS, PERSONS PRIMARILY ENGAGED AS THEIR HELPERS AND PERSONS CLASSIFIED AS PUMP STATION OPERATORS IN VOTING CONSTITUENCY #2 VOTE IN FAVOUR OF THE INCUMBENT UNION, OR IF THE BOARD DETERMINES THAT THE UNIT PROPOSED BY INTERVENER #2 IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING, THE SEGREGATED BALLOTS CAST BY SUCH PERSONS IN VOTING CONSTITUENCY #1 WILL THEN BE COUNTED IN THAT VOTING CONSTITUENCY.

16. THESE MATTERS ARE REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENT - TERMINATION

17045-69-R: LEO SMITH (APPLICANT) v. LAUNDRY & LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 (RESPONDENT) v. NEW YORK WINDOW CLEANING COMPANY LIMITED (INTERVENER).

BEFORE: R. A. Furness, Vice-Chairman and Board Members P. J. O'Keeffe and R. W. Teagle.

APPEARANCES AT THE HEARING: Leo Smith for the applicant; W.W. Tiller for the respondent; Bernard Gangbar for the intervener.

DECISION OF THE BOARD: January 6, 1970.

1. This is an application made under section 43 of The Labour Relations Act for a declaration terminating the bargaining rights of the respondent. The respondent and The Association of Toronto and District Window Cleaning Contractors were parties to a collective agreement effective from November 1, 1966 until October 31, 1969. The collective agreement also provided that unless either party gave notice in writing to the other party that amendments to the collective agreement were required within a period of sixty days prior to October 31, 1969, then the collective agreement should remain in effect until October 31, 1970, and so on from year to year unless written notice of desire to amend the collective agreement was given within sixty days prior to any anniversary date. It was agreed by the parties that the intervener was a member of the Association at least until October 30, 1969 and was bound by the provisions of the collective agreement. The respondent gave notice to the Association prior to October 31, 1969 of its desire to amend the collective agreement and met and bargained with the Association. By a letter dated August 29, 1969 the Association delivered to the respondent a list in writing of the names of its members for whom it was bargaining, including that of the intervener. The intervener notified the Association in writing on October 30, 1969 of its withdrawal from the Association but did not notify the respondent of its withdrawal. Having regard to the provisions of section 38(2) of The Labour Relations Act, it follows that the Association was bargaining on behalf of the intervener and that the collective agreement did not renew itself in so far as the intervener is concerned. This application was filed on December 1, 1969, prior to the making of a new collective agreement between the respondent and the Association. It was admitted by the respondent that it had not sought the appointment of a conciliation officer or a mediator in this matter. The Board therefore finds, having regard to the foregoing and the provisions of section 46(2) of The Labour Relations Act, that this application is timely.

2. Having regard to the evidence adduced in support of the application and the representations of the parties, the Board is satisfied on the basis of the evidence before it that not less than fifty per cent of the employees of New York Window Cleaning Company Limited in the bargaining unit, at the time the application was made, had voluntarily signified in writing that they no longer wish to be represented by the respondent union on December

11, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 43(3) OF THE LABOUR RELATIONS ACT.

3. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF NEW YORK WINDOW CLEANING COMPANY LIMITED. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF NEW YORK WINDOW CLEANING COMPANY LIMITED IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF, ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

4. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

5. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENTS - SECTION 65

16490-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. CHAIRTEX MANUFACTURING LIMITED (RESPONDENT).

- AND -

16449-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. CHAIRTEX MANUFACTURING LIMITED (RESPONDENT).

- AND -

16419-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. CHAIRTEX MANUFACTURING LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: L. A. MACLEAN AND F. RAO FOR THE APPLICANT; BENJAMIN LAMB, RUDY RIETZ AND HELMUT KELLERMEIER FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER P. J. O'KEEFFE: JANUARY 12, 1970.

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3. THE COMPLAINANT ALLEGES THAT THE RESPONDENT DEALT WITH LAZARUS BELTSIDIS, MANUEL LIMA, ROSSEL JUAN CARLOS, JEAN PIERRE RENTERO AND CARLOS GARCIA CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT. THE COMPLAINANT WITHDREW THE NAME OF ROSSEL JUAN CARLOS FROM THE LIST OF THE AGGRIEVED AT THE COMMENCEMENT OF THE HEARING.

4. The respondent contends that Beltsidis, Lima, Carlos and Rentero were placed on an indefinite vacation period and that Carlos Garcia was discharged as an unsatisfactory employee. Garcia's dismissal took place on Saturday, July 5, 1969. The other aggrieved persons were purportedly laid off on July 8, 1969. We propose to deal first with those said to have been laid off.

5. With respect to the organization of the complainant, the evidence of Garcia, who had been employed by the respondent as a tool and die maker, was that on Friday, July 4th and Monday, July 7th, he obtained application for membership in the complainant union from some 11 or 12 employees of the respondent among whom were the aggrieved persons mentioned above.

6. On Tuesday, July 8th, a notice was posted near the time-clock in Plant, listing the names of 8 employees including those of the aggrieved herein, with the exception of Garcia. One of the witnesses stated that the notice made reference to employees who had been complaining about the conditions in the Plant and indicated that they would be going on a vacation for an indefinite period. Evidence was lacking as to the precise wording of the notice, but it was quite clear that it referred to an indefinite lay off or "vacation".

7. There was evidence given by two of the aggrieved that during the course of July the 8th, Mr. Rudy Rietz, Vice-President of the respondent, had made inquiries of them as to union membership. Mr. Beltsidis stated that Rietz invited him into the office shortly after 8 o'clock in the morning and asked him if he wanted to come on his side. Upon the witness asking Rietz what he meant, the latter said that the guys were trying to have a union and went on to ask him if he wanted to sign against it. The witness stated that he would not sign against the union because he had already signed for the union. The witness then said that Rietz shouted to a Mr. Helmut Kellermeier, one of the owners of the business, that "Lazarus has signed too". Later in the same day, Rietz again talked to Beltsidis, according to the latter's evidence and asked him to go upstairs in the Plant to find out is some of the Greek employees had signed for the union. Beltsidis stated that he went upstairs but did not carry out the request. At about 3 p.m. on the same day, Beltsidis says he was called to go into Mr. Rietz's office. Before going into the office, however, Rietz said to him "Lazarus you want to come to my side or not?" The witness replied in the negative. He did not go into the office, but went back to work. He testified that when he went to punch out at 5 o'clock, Mr. Rietz was there and he gave him his cheque and his Unemployment Insurance Book. According to Beltsidis, he was told by Rietz not

TO COME IN TOMORROW OR ANY MORE. ON JULY 17TH, BELTSIDIS RECEIVED A PHONE CALL FROM KELLERMEIER REQUESTING HIM TO COME TO WORK ON JULY 18. HE REPORTED ON THE 18TH AND WORKED IN THE SHIPPING ROOM UNTIL JULY 22ND WHEN HE WAS SENT HOME AGAIN. DURING THIS PERIOD, HE WAS APPROACHED BY ONE MARIO CONCERNING THE UNION AND WAS ASKED TO SIGN AGAINST THE UNION. HE RECEIVED HIS CHEQUE AT 5 O'CLOCK ON JULY 22ND AND WAS TOLD THAT THE PLANT WAS NOT BUSY.

8. MANUEL LIMA TESTIFIED THAT HE SIGNED A UNION CARD ON JULY 4TH OR JULY 8TH, HE WAS NOT QUITE SURE. THE CARD WAS PRESENTED TO HIM BY CARLOS GARCIA. ON JULY 8TH, RUDY RIETZ ASKED HIM IF HE HAD SIGNED FOR THE UNION AND IF HE KNEW ANYBODY ELSE WHO DID. HE TOLD RIETZ THAT HE HAD SIGNED AND THAT HE KNEW WHO ELSE HAD SIGNED BUT WAS NOT GOING TO TELL. HE SAID THAT NOTHING ELSE WAS SAID WITH RESPECT TO THE UNION. HE STATED THAT HE SAW A NOTICE ON THE BOARD AT 5 O'CLOCK IN THE EVENING WHICH SAID SOMETHING TO THE EFFECT THAT THOSE WHO WERE COMPLAINING ABOUT WORKING CONDITIONS WERE GOING ON A VACATION FOR AN UNCERTAIN AMOUNT OF TIME. HIS NAME WAS ON THE LIST, TOGETHER WITH THAT OF BELTSIDIS, RENTERO AND SEVERAL OTHER EMPLOYEES WHOSE NAMES HE COULDN'T RECALL.

9. EVIDENCE WAS ALSO GIVEN BY JEAN PIERRE RENTERO WHO STATED THAT HE HAD SIGNED FOR THE UNION ON JULY 8TH AND WAS ONE OF THOSE WHOSE NAMES APPEARED ON THE LIST AND THAT HIS EMPLOYMENT WAS TERMINATED ON THAT DAY. HE STATED HOWEVER, THAT HE HAD HAD NO CONVERSATION WITH ANYBODY WITH RESPECT TO HIS OR ANYBODY ELSE'S UNION MEMBERSHIP.

10. EVIDENCE ON BEHALF OF THE COMPANY WAS GIVEN BY MR. KELLERMEIER AND MR. RIETZ WHO ARE JOINT OWNERS OF THE BUSINESS. IT WAS THE POSITION OF THE RESPONDENT THAT THE LAY-OFF WAS CAUSED BY A REDUCTION IN THE PRODUCTION OF THE PLANT DUE TO LACK OF ORDERS. THE RESPONDENT MANUFACTURES INSTITUTIONAL FURNITURE WHICH IS SOLD ONLY TO SUPPLIERS AND NOT DIRECTLY TO CUSTOMERS. KELLERMEIER STATED THAT PART OF THE BUSINESS DEPENDED UPON SCHOOL ORDERS WHICH USUALLY COME OUT IN JULY, AUGUST AND SEPTEMBER. HE SAID THAT THIS YEAR, TENDERS NOT ONLY CAME OUT VERY LATE, BUT THEY CALLED FOR PLASTIC CHAIRS WHICH THE RESPONDENT DOES NOT MAKE. HE GAVE COMPARATIVE FIGURES FOR PRODUCTION IN THE MONTHS OF JUNE, JULY AND AUGUST OF 1968 AND 1969 RESPECTIVELY. THESE FIGURES SHOW A SUBSTANTIAL DECREASE IN PRODUCTION. THERE WAS ALSO FILED WITH THE BOARD A LETTER IDENTIFIED BY KELLERMEIER AS COMING FROM MANUFACTURERS SALES ASSOCIATES IN VANCOUVER AND WRITTEN ON THEIR LETTERHEAD CANCELLING A JUNE ORDER FOR 1800 CHAIRS WHICH KELLERMEIER SAID WAS WORTH AT $20,000.00 AND REPRESENTED THREE WEEKS' WORK FOR ALL EMPLOYEES. THE LETTER IS DATED JULY 4, 1969 AND WAS RECEIVED ACCORDING TO KELLERMEIER AROUND JULY 6TH, 1969. JULY THE 6TH BEING A SUNDAY, PROBABLY THE LETTER WAS RECEIVED ON JULY THE 7TH.

11. It should, perhaps, be noted at this point that the main organizational activity of the union took place on July 4th, 1969 and the indefinite vacation or lay-off was implemented on July 8th, 1969. Kellermeier stated that he had gone to the United States seeking business in June and contemplated a lay-off at the end of that month.

12. In the course of offering an explanation as to why the aggrieved persons were chosen for lay-off, Kellermeier stated that Lima had worked mostly on the punch press. He stated that the Company had developed a new machine which did away with three operations and affected the work on the punch press so that there was not enough work to keep Lima busy. He stated that Rentero was chosen for lay-off because he was an unpunctual person and had been late 51 times in the three months of April, May and June prior to the lay-off and had also been absent for three days. He had only been with the Company from three to four months. He said that Beltsidis a good worker who was always on time and that he was laid off because of the lack of work in the shipping department. Beltsidis has an allergy to metal and could not be employed elsewhere in the Plant where he will come in direct contact with the metal. He also said that they had decided to lay-off single people and to keep long term people. It is of interest to note that Lima had two years' service with the Company when he was let go. Kellermeier also stated that he was not aware of any connection that any of the laid off employees had with the union. He denied that Rietz had shouted anything to him with respect to Beltsidis having become a member of the union. It will be recollected that Beltsidis' testimony was that this remark had been made by Rietz to Kellermeier.

13. Rietz stated that he made out and posted a list containing 8 names of employees. He said that it indicated that due to lack of work, the persons named on thelist would have to have an indefinite vacation. He said that the names were those of employees in certain areas where there was no work or where work could be done by others. He stated that they had a lot of components on hand so that bending machine and punch press operators were not necessary full-time. He stated that he kept people who could do a number of functions and let go those who could do only one. He stated that he was jointly responsible for making the choices. He stated that Lima could only operate the punch press and he kept other people on because of their versatility. He considered Lima a young man who could find other work easily. He stated unequivocably that he did not know anything about the union membership at the time of lay-off and that he first heard of the union either when a notice appeared on the Board or when an inspector came to hear about complaints.

HE HAD NO RECOLLECTION OF THE CONVERSATIONS RELATED TO BELTSIDIS AND LIMA WITH RESPECT TO UNION MEMBERSHIP. HE STATED THAT RENTERO WAS LAID OFF BECAUSE OF HIS LATENESS AND BECAUSE OF THE FACT THAT THEY HAD A NEW MACHINE AND THE BENDING OPERATION HAD CHANGED SO THAT THERE WAS LESS WORK TO BE DONE ON IT. IN HIS OPINION, BELTSIDIS WAS A GOOD WORKMAN, BUT HAD TO BE LET GO BECAUSE OF THE LACK OF WORK IN THE SHIPPING DEPARTMENT. HE SAID HE VAGUELY REMEMBERS A CONVERSATION WITH BELTSIDIS IN WHICH, HE SAID, THE LATTER ASKED HIM IF HE LIKE THE UNION. RIETZ STATED THAT HE REPLIED THAT HE DIDN'T UNDERSTAND WHAT BELTSIDIS MEANT BY THIS REMARK AND THAT THAT WAS THE EXTENT OF HIS CONVERSATION WITH THIS EMPLOYEE WITH RESPECT TO THE UNION.

14. WE HAVE NO REASON TO DOUBT THE EVIDENCE OF KELLERMEIER WITH RESPECT TO THE EVENTS LEADING UP TO AND CAUSING THE RESPONDENT'S DECISION TO LAY-OFF SOME OF ITS EMPLOYEES. WE DO, HOWEVER, HAVE DOUBTS WITH RESPECT TO THE REASONS WHY THE PARTICULAR PERSONS LAID OFF WERE CHOSEN. CERTAIN REASONS, AS ALREADY REVIEWED, WERE ADVANCED BY BOTH OWNERS. IT IS TO BE RECOLLECTED THAT RIETZ STATED THAT HE WAS CHIEFLY RESPONSIBLE FOR THE SELECTION. IT WAS SAID THAT ONE CONSIDERATION IN KEEPING EMPLOYEES ON WAS LONG SERVICE AND VERSATILITY. BOTH, BELTSIDIS AND LIMA, WERE LONG SERVICE EMPLOYEES IN A PLANT WHERE LENGTH OF SERVICE WAS NOT A COMMON THING. THE FACT THAT LIMA WAS SINGLE WAS ALSO ADVANCED AS A REASON. AT LEAST ONE OTHER EMPLOYEE WHO WAS NOT RELEASED WAS ALSO SINGLE. VERSATILITY WAS SAID TO BE ANOTHER FACTOR, YET IT WAS KELLERMEIER'S TESTIMONY THAT THEY ALWAYS HAD PEOPLE COMING AND GOING - THAT IT IS NOT A VERY SKILLED BUSINESS. HIS EVIDENCE IS THAT LIMA HAD WORKED "MOSTLY" ON THE PUNCH PRESS. WHILE THESE OBSERVATIONS ARE NOT CONCLUSIVE, THEY DO SERVE TO POINT OUT SOME DISCREPANCIES IN THE EVIDENCE.

15. AS ALREADY NOTED, THERE IS A SHART CONFLICT OF EVIDENCE IN THE TESTIMONY OF RIETZ AS OPPOSED TO THAT OF LIMA AND BELTSIDIS IN THE MATTER OF RIETZ'S INQUIRIES OF JANUARY 8TH WITH RESPECT TO UNION MEMBERSHIP, AND IT IS HERE THAT LIES THE SOURCE OF OUR DOUBTS WITH RESPECT TO THE SELECTION FOR LAY-OFF. WITH RESPECT TO THE CONFLICT, WE FEEL COMPELLED TO ACCEPT THE EVIDENCE OF BELTSIDIS AND LIMA IN PREFERENCE TO THAT OF RIETZ WHOSE DENIALS, INCIDENTALLY WERE NOT DIRECT, BUT RATHER STATEMENTS OF INABILITY TO REMEMBER. WE THEREFORE BELIEVE THAT ON JULY 8TH, THE DATE OF THE LAY-OFF, RIETZ DISPLAYED AN INTENSE DESIRE TO FIND OUT WHO HAD JOINED THE UNION. THESE INQUIRIES WERE CONDUCTED BEFORE THE NAMES OF THE EMPLOYEE TO BE LAID OFF WERE POSTED.

16. IT IS OUR OPINION THAT WHILE A CERTAIN PLAUSIBILITY MIGHT HAVE INITIALLY ATTACHED TO THE REASONS FOR SELECTION GIVEN BY THE RESPONDENT, IT IS QUICKLY DISSIPATED BY A CONSIDERATION OF

THE ASSIDUOUS EFFORTS OF RIETZ TO ASCERTAIN WHO WERE THE UNION MEMBERS ON THE DAY OF THE LAY-OFF. WE CAN COME TO NO OTHER CONCLUSION THAN THAT RESPONDENT, RIETZ IN PARTICULAR, ATTEMPTED TO SORT OUT THE EMPLOYEES WHO WERE SUPPORTING THE UNION IN ORDER TO LAY THEM OFF RATHER THAN THOSE WHO WERE NOT SUPPORTING THE UNION. THE FACT THAT HE MAY NOT HAVE BEEN WHOLLY SUCCESSFUL IN HIS SELECTION IN NO WAY MITIGATES THE IMPROPRIETY OF THIS KIND OF CONDUCT.

17. WE, THEREFORE, FIND THAT THE AGGRIEVED PERSONS WHOSE CASES WERE HEARD BEFORE THE BOARD, NAMELY MANUEL LIMA, LAZARUS BELTSIDIS AND JEAN PIERRE RENTERO WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

18. OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT WITH RESPECT TO THE EMPLOYEES SAID TO HAVE BEEN LAID OFF IS AS FOLLOWS:

(A) MANUEL LIMA SHALL BE FORTHWITH REINSTATED IN THE SAME POSITION OR A LIKE POSITION THERETO AS HE HELD ON THE DATE OF HIS TERMINATION. IT IS TO BE NOTED THAT LAZARUS BELTSIDIS AND JEAN RENTERO DO NOT SEEK REINSTATEMENT.

(B) AS COMPENSATION FOR LOSS OF WAGES FROM JULY 8, 1969 TO JULY 29, 1969 WHEN NEW EMPLOYMENT OBTAINED, THE RESPONDENT FORTHWITH SHALL PAY LAZARUS BELTSIDIS THE SUM OF $200.00.

(C) AS COMPENSATION FOR LOST WAGES FROM JULY 25, 1969, WHEN HE FIRST SOUGHT NEW EMPLOYMENT, TO NOVEMBER 12, 1969, THE RESPONDENT FORTHWITH SHALL PAY MANUEL LIMA THE SUM OF $975.00.

(D) AS COMPENSATION FOR LOST WAGES FROM JULY 8, 1969 TO AUGUST 25, 1969, AFTER WHICH DATE HE MAKES NO CLAIM FOR COMPENSATION, THE RESPONDENT FORTHWITH SHALL PAY TO JEAN RENTERO THE SUM OF $650.00.

(E) THE PARTIES SHALL MEET FORTHWITH TO AGREE UPON THE AMOUNT OF LOSS OF EARNINGS, IF ANY, SUSTAINED BY MANUEL LIMA, BETWEEN NOVEMBER 12, 1969 AND THE DATE OF HIS ACTUAL RE-EMPLOYMENT BY THE RESPONDENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS AFTER THE RELEASE OF THIS DECISION OR WITHIN SUCH FURTHER PERIODS AS THE PARTIES MAY MUTUALLY AGREE UPON, THE AMOUNT OF ANY SUCH FURTHER COMPEN-

SATION PAYABLE, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER HEARING FOR THAT PURPOSE.

19. WE NOW COME TO THE MATTER OF CARLOS GARCIA. THIS EMPLOYEE, AS ALREADY NOTED, WAS DISCHARGED ON SATURDAY, SEPTEMBER 5TH, THE MORNING FOLLOWING THE DAY UPON WHICH HEHAD SIGNED UP A NUMBER OF EMPLOYEES FOR THE UNION.

20. GARCIA HAD BEEN EMPLOYED BY THE COMPANY FOR SIX MONTHS PRIOR TO HIS DISCHARGE. HE HAD BEEN DIRECTED TO THE COMPANY MANPOWER AND HAD BEEN UNEMPLOYED FOR THE PREVIOUS FOUR MONTHS. HE WAS EMPLOYED AS A TOOL AND DIE MAKER. ACCORDING TO KELLERMEIER, GARCIA WAS AN UNSATISFACTORY EMPLOYEE FROM THE POINT OF VIEW OF LATENESS, ABSENTEEISM AND HIS PECULIAR HABITS OF SCREAMING AND LAUGHING WHILE AT WORK. HE STATED THAT HE HAD TOLD RIETZ MANY TIMES TO GET RID OF GARCIA. RIETZ SAID THAT HE HAD BEEN DISSATISFIED WITH GARCIA FOR SOME TIME PRIOR TO THE FIRING. HE SAID HE GAVE GARCIA A RAISE IN THE HOPE OF GETTING MORE PRODUCTION AND BETTER WORK OUT OF HIM. HE STATED THAT GARCIA WANTED AN EXTENDED TRIAL PERIOD, THAT HE DID NOT "LIVE UP TO HIS MARKS", SHOWED A LACK OF INTEREST IN HIS WORK AND WOULD NOT STAY AT HIS WORK STATION.

21. GARCIA TESTIFIED AS FOLLOWS: HE WENT TO THE PLANT ON SATURDAY, SEPTEMBER 5TH BECAUSE HE HAD FORGOTTEN HIS WALLET. HE ENCOUNTERED RIETZ AND KELLERMEIER AND TOLD THEM HE HAD COME TO PICK UP HIS WALLET. RIETZ TOLD HIM HE COULD ALSO PICK UP HIS TOOL BOX AND GO HOME AS HE WAS NOT NEEDED ANY MORE. RIETZ TOLD HIM HE WAS A BAD CHARACTER AND WAS NOT WANTED. ON TUESDAY, JULY 10TH, HE WENT TO PICK UP HIS TOOL BOX AND AGAIN ENCOUNTERED RIETZ. HE ASKED RIETZ WHY HE REALLY FIRED HIM. THE LATTER SIMPLY REPLIED THAT HE DID NOT WANT AN ARGUMENT. GARCIA THEN PERSISTED IN HIS INQUIRY AND WAS TOLD THAT FIVE EMPLOYEES HAD SAID THEY WOULD COME IN THAT DAY, SATURDAY, BUT HAD NOT ARRIVED AND THAT HE, GARCIA, HAD ORGANIZED THEM NOT TO COME IN. GARCIA THEN SAID TO RIETZ THAT HE HAD REALLY FIRED HIM FOR UNION ACTIVITY. HE SAID THAT RIETZ THEN SAID "OH - THAT TOO - I WAS THINKING BUT I WAS NOT SURE". GARCIA SAYS HE THEN TOLD RIETZ HE WOULD GET NEWS FROM THE UNION. RIETZ REPLIED THAT "I WAS A BIG MOUTH AND PEOPLE WERE LAUGHING AT ME". GARCIA ALSO COMPLAINED THAT KELLERMEIER HAD CALLED HIM STUPID AND THAT HE HAD TOLD HIM NOT TO CALL HIM STUPID BECAUSE HE, KELLERMEIER WAS " A BLOODY COMMISSAR".

22. IN OUR OPINION, THE FAILURE OF THE FIVE PERSONS TO REPORT ON SATURDAY MORNING WHICH RIETZ ATTRIBUTED TO GARCIA WAS THE REAL CAUSE OF THE DISCHARGE. WHEN QUESTIONED ABOUT RIETZ'S

DEMEANOUR WHEN HE REMARKED "OH THAT TOO" WHEN GARCIA MENTIONED THE UNION, GARCIA SAID THAT RIETZ SEEMED SURPRISED AND ALSO PLEASED. IN VIEW OF WHAT WE HAVE ALREADY FOUND WITH RESPECT TO RIETZ'S ATTITUDE TO THE UNION, WE CAN APPRECIATE THAT HE MAY HAVE BEEN PLEASED TO MAKE WHAT, IN VIEW OF HIS SURPRISE SEEMS TO US TO HAVE BEEN THE DISCOVERY THAT GARCIA WAS CONNECTED WITH THE UNION.

23. THERE IS NO EVIDENCE THAT WOULD REASONABLY LEAD TO A FINDING THAT RIETZ WAS AWARE OF GARCIA'S UNION CONNECTIONS PRIOR TO THE TIME OF THIS ENCOUNTER. THE DISCHARGE HAD TAKEN PLACE ON THE PREVIOUS SATURDAY AND PRECEDED RIETZ'S CAMPAIGN OF INQUIRY OF JULY 8TH. HAVING IN MIND THE ONUS RESTING UPON THE COMPLAINANT IN MATTERS SUCH AS THIS, WE FIND THAT THE COMPLAINANT HAS NOT ESTABLISHED THAT THE RESPONDENT DEALT WITH CARLOS GARCIA CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT AND THE COMPLAINT INSOFAR AS CARLOS GARCIA IS CONCERNED IS HEREBY DISMISSED.

DECISION OF BOARD MEMBER J. E. C. ROBINSON: JANUARY 12, 1970.

I AM IN AGREEMENT WITH THE FINDING OF THE MAJORITY THAT THE COMPLAINT INSOFAR AS CARLOS GARCIA IS CONCERNED SHOULD BE DISMISSED.

WITH RESPECT TO MANUEL LIMA AND JEAN RENTERO, I AM IN AGREEMENT WITH THE DETERMINATION OF THE MAJORITY AS SET OUT IN PARAGRAPH 18(A) (C) (D) AND (E) ALTHOUGH NOT NECESSARILY BASED ON THE SAME REASONING AS THE MAJORITY.

WITH RESPECT TO THE COMPLAINANT, BELTSIDIS, I WOULD NOT HAVE ORDERED ANY COMPENSATION BE PAID TO HIM, AS IT WAS NOT MY UNDERSTANDING THAT ANY CLAIM WAS BEING MADE FOR HIM AS A RESULT OF HIS NON-APPEARANCE AT THE INITIAL HEARING BEFORE THIS BOARD. ACCORDINGLY, I WOULD DISMISS HIS COMPLAINT.

16993-69-U: MR. GEORGE SCARPELLINI (COMPLAINANT) V. UNITED BROTHERHOOD OF CARPENTERS OF AMERICA LOCAL 2486 (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JANUARY 26, 1970.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. THE FIELD OFFICER HAS REPORTED THAT ON DECEMBER 13, 1969 THE AGGRIEVED PERSON HAD ADVISED HIM THAT THE MATTER HAD BEEN SETTLED AND THAT THE COMPLAINT WOULD BE WITHDRAWN.

NO SUCH WITHDRAWAL HAS BEEN RECEIVED BY THE BOARD DESPITE THE FACT THAT THE FIELD OFFICER WAS ADVISED ON TWO SUBSEQUENT OCCASIONS BY THE AGGRIEVED THAT A LETTER HAD IN FACT BEEN SENT.

2. IT IS CLEAR FROM THE STATEMENT OF THE AGGRIEVED PERSON, GEORGE SCARPELLINI, THAT HE IS A PERSON WHO EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. ACCORDING TO THAT STATEMENT HE IS A FOREMAN OF CARPENTERS WHO DOES NOT WORK WITH THE TOOLS AND IS STRICTLY A SUPERVISOR. HE HAS AUTHORITY TO HIRE AND FIRE CARPENTERS AND HAS EXERCISED THAT AUTHORITY DURING THE FOUR YEARS THAT HE HAS BEEN A FOREMAN. THE FACT THAT HE MAY BE COVERED BY A COLLECTIVE AGREEMENT DOES NOT DETRACT FROM HIS STATUS AS A PERSON EXERCISING MANAGERIAL FUNCTIONS.

3. IN JARVIS (BARBARA) V. ASSOCIATED MEDICAL SERVICES LTD. ET AL, 64 C.L.L.C. PAR. 15,511, THE SUPREME COURT OF CANADA HELD THAT SECTION 65 OF THE LABOUR RELATIONS ACT ONLY APPLIED TO EMPLOYEES COVERED BY THE LABOUR RELATIONS ACT AND THAT CONSEQUENTLY A PERSON EXERCISING MANAGERIAL FUNCTIONS, NOT BEING AN EMPLOYEE, COULD NOT INSTITUTE A COMPLAINT UNDER SECTION 65.

4. HAVING REGARD, THEN, TO THE ABOVE CONSIDERATIONS, THE COMPLAINT IN THE OPINION OF THE BOARD DOES NOT MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND HAVING REGARD TO THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE THE COMPLAINT IS HEREBY DISMISSED.

17051-69-U: DOUGLAS FOX, PAUL HICKEY AND BRUCE WILKES (COMPLAINANT) V. MICHAEL CLARK (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JANUARY 9, 1970.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANTS, WHO ARE ALSO THE AGGRIEVED PERSONS, CLAIM THAT THEY HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 59A(2)(A) OF THE LABOUR RELATIONS ACT. THE RESPONDENT IS A BUSINESS REPRESENTATIVE OF LOCAL 1783 OF THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA. THE BOARD APPOINTED A FIELD OFFICER IN THIS MATTER AND HE HAS NOW REPORTED TO THE BOARD.

2. WE HAVE GIVEN CAREFUL CONSIDERATION TO THE STATEMENT SIGNED BY THE COMPLAINANTS IN THE PRESENCE OF THE FIELD OFFICER. THIS STATEMENT SETS OUT IN SOME DETAIL THE PARTICULARS OF THE

COMPLAINT. THERE IS NOTHING IN THIS STATEMENT WHICH IN ANY WAY SUGGESTS A VIOLATION OF SECTION 59A(2)(A) OF THE ACT. THAT SECTION DEALS WITH THE PROTECTION OF WITNESS'S RIGHTS AND THERE IS NOTHING IN THE STATEMENT INDICATING THAT THE COMPLAINANTS HAVE BEEN DISCRIMINATED AGAINST OR INTIMIDATED OR COERCED BY THE RESPONDENT BECAUSE OF A BELIEF ON HIS PART THAT THE COMPLAINANTS WERE GOING TO TESTIFY IN A PROCEEDING UNDER THE ACT OR FOR ANY OF THE OTHER MATTERS ENUMERATED IN THE SAID SUBSECTION.

3. THE COMPLAINANTS WERE ASKED BY THE FIELD OFFICER TO NAME SOME OTHER SECTION OF THE ACT WHICH THEY BELIEVED THE RESPONDENT HAD VIOLATED. THEY WERE UNABLE TO DO SO. AFTER CAREFULLY CONSIDERING THE SAID STATEMENT OF THE COMPLAINANTS, WE ALSO ARE UNABLE TO FIND THAT THE ALLEGED ACTIONS OF THE RESPONDENT, IF PROVED, WOULD CONSTITUTE A BREACH OF ANY OTHER SECTION OF THE ACT.

4. HAVING REGARD TO THE ABOVE CONSIDERATIONS AND TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT DOES NOT IN OUR OPINION MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE COMPLAINT IS ACCORDINGLY DISMISSED.

17067-69-U: DONALD W. STAFFORD, RR1 LEAMINGTON ONT. (COMPLAINANT) v. SMITH TRANSPORT LTD. 150 COMMISIONER ST. TORONTO, ONT. (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JANUARY 26, 1970.

1. FOLLOWING THE RECEIPT OF THE REPORT OF THE FIELD OFFICER, THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO THE INTRA-PROVINCIAL, INTER-PROVINCIAL AND EXTRA-TERRITORIAL ASPECTS OF THE RESPONDENT'S OPERATIONS. THIS APPOINTMENT WAS MADE IN VIEW OF THE CLAIM BY THE RESPONDENT THAT ITS OPERATIONS BROUGHT IT UNDER FEDERAL RATHER THAN PROVINCIAL JURISDICTION.

2. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED JANUARY 14, 1970 IN THIS MATTER.

3. The Board has now considered the reports of the Field Officer and the Examiner. The respondent failed to supply the Examiner with sufficient evidence which, in our view, would enable us to make a determination that the respondent's operations fall under federal jurisdiction and we accordingly do not base our decision in this case on that ground.

4. It is clear from the report of the Field Officer that the aggrieved person is covered by a collective agreement and has filed a grievance in connection with the matter complained of. According to the respondent, that grievance is being processed.

5. In the United Gas Limited Case, OLRB M.R. January, 1963, p. 439 at p. 441 the Board said:

> It is the well established practice of this Board that where the conduct complained of as constituting a basis for relief under section 65 of the Act is properly the subject matter of a grievance under a subsisting collective agreement, that as a general rule, this Board should decline to inquire into the grievance under section 65 of the Act.

The present case appears to fall squarely within the principle set out above and accordingly, the complaint does not in the opinion of the Board make out a prima facie case for the remedy requested.

6. Having regard to the provisions of section 46 of the Board's Rules of Procedure, the complaint is accordingly dismissed.

17094-69-U: Retail Clerks International Association (Complainant) v. Oscar Goodman Drugs carrying on business under the trade name of Shoppers Drug Mart (Respondent).

BEFORE: G. W. Reed, Q.C., Chairman, and Board Members E. Boyer and R. W. Teagle.

DECISION OF THE BOARD: January 26, 1970.

1. This is a complaint under section 65 of the Labour Relations Act. The Board has carefully considered the complaint and the statement of the aggrieved person, Mrs. Helen Challon.

THERE IS NOTHING IN THAT STATEMENT WHICH IN OUR VIEW IN ANY WAY SUPPORTS THE CLAIM THAT THE AGGRIEVED WAS DISCHARGED BECAUSE OF UNION ACTIVITY.

2. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE COMPLAINT DOES NOT IN OUR OPINION MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT IS ACCORDINGLY DISMISSED.

INDEXED ENDORSEMENT - SECTION 34(3)

16916-69-M: TORONTO PRINTING PRESSMEN & ASSISTANTS' UNION NO. 10 (TRADE UNION) V. FULLERTON-WESTON PUBLISHING LIMITED (EMPLOYER).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: IAN G. SCOTT, THOMAS OSBORNE FOR THE APPLICANT; BRIAN DUNN FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 2, 1970.

1. THE APPLICANT UNION HAS REQUESTED THE MINISTER OF LABOUR TO APPOINT A MEMBER TO CONSTITUTE A BOARD OF ARBITRATION PURSUANT TO SECTION 34(4) OF THE LABOUR RELATIONS ACT. THIS APPLICATION IS PURSUANT TO SECTION 79(A) WHEREBY THE MINISTER HAS REFERRED THE MATTER TO THE ONTARIO LABOUR RELATIONS BOARD TO REPORT WHETHER OR NOT THE MINISTER HAS AUTHORITY TO MAKE SUCH AN APPOINTMENT.

2. IT APPEARS FROM THE EVIDENCE ADDUCED BY THE APPLICANT UNION THAT A COLLECTIVE AGREEMENT HAD BEEN ENTERED INTO BETWEEN THE COUNCIL OF PRINTING INDUSTRIES OF ONTARIO (HEREINAFTER REFERRED TO AS THE COUNCIL) AND THE APPLICANT TRADE UNION. THE COUNCIL IS AN EMPLOYER'S ORGANIZATION THAT REPRESENTS CERTAIN EMPLOYERS IN THE PRINTING INDUSTRY AND HAD ENTERED INTO THE COLLECTIVE AGREEMENT ON BEHALF OF THOSE EMPLOYERS. FULLERTON-WESTON PUBLISHING LIMITED (HEREINAFTER REFERRED TO AS FULLERTON) WAS A MEMBER OF THE COUNCIL AND THE COUNCIL HAD BARGAINED ON ITS BEHALF. SUBSEQUENT TO THE COLLECTIVE AGREEMENT BEING ENTERED INTO ON MAY 23RD, 1969, FULLERTON INFORMED THE APPLICANT UNION THAT IT WAS NOT BOUND BY THE COLLECTIVE AGREEMENT.

3. THE RESPONDENT DID NOT ADDUCE ANY EVIDENCE NOR WAS ANY ARGUMENT SUBMITTED WITH RESPECT TO THE POSITION OF FULLERTON.

4. In our opinion, section 38 of The Labour Relations Act is applicable to the instant facts. That section provides inter alia:

> 38-(1) "A collective agreement between an employers' organization and a trade union or council of trade unions is, subject to and for the purposes of this Act, binding upon each person who was a member of the employers' organization at the time the agreement was entered into and on whose behalf the employers' organization bargained with the trade union or council of trade unions as if it was made between each of such persons and the trade union or council of trade unions, and, if any such person ceases to be a member of the employers' organization during the term of operation of the agreement, he shall, for the remainder of the term of operation of the agreement, be deemed to be a party to a like agreement with the trade union or council of trade unions.
>
> (2) When an employers' organization commences to bargain with a trade union or council of trade unions, it shall deliver to the trade union or council of trade unions a list of the names of the employers on whose behalf it is bargaining and, in default of so doing, it shall be deemed to bargain for all members of the employers' organization for whose employees the trade union or council of trade unions is entitled to bargain and to make a collective agreement at that time, except an employer who, either by himself or through the employers' organization, has notified the trade union or council of trade unions in writing before the agreement was entered into that he will not be bound by a collective agreement between the employers' organization and the trade union or council of trade unions."

In this case Fullerton did not notify the trade union in writing before the agreement was entered into that it would not be bound and accordingly, pursuant to section 38(2) the bargaining that took place was on behalf of all members of the Council including Fullerton. It therefore follows pursuant to section 38(1) of The Labour Relations Act that the collective agreement entered into was binding upon Fullerton.

5. We therefore respectfully report to the Minister that the Minister is entitled to appoint a member to constitute a Board of Arbitration pursuant to section 34(3) with respect to Fullerton.

6. A FURTHER QUESTION ARISES AS TO WHETHER OR NOT THE BOARD SHOULD REPORT TO THE MINISTER WITH RESPECT TO WELCH & QUEST LIMITED AND SAMPSON MATTHEWS LIMITED. HAVING REGARD TO THE DOCUMENTS FILED, WE ARE OF THE OPINION THAT A REQUEST WAS MADE BY THE APPLICANT UNION WITH RESPECT TO WELCH & QUEST LIMITED AND SAMPSONMATTHEWS LIMITED. BOTH OF THOSE COMPANIES WERE SERVED WITH NOTICE OF THE APPLICATION AND HEARING AND ALTHOUGH DULY SERVED, DID NOT APPEAR AT THE HEARING. THEY ARE DESCRIBED IN THE DOCUMENT AS "INTERESTED PARTIES".

7. HOWEVER, IN THE DOCUMENT REFERRING THIS MATTER TO THE BOARD IT APPEARS THAT THE QUESTION REFERRED IS WITH RESPECT TO FULLERTON ONLY AND ACCORDINGLY ALTHOUGH THE FACTS APPEAR TO BE THE SAME WITH RESPECT TO WELCH & QUEST LIMITED AND SAMPSON MATTHEWS LIMITED, THE BOARD DECLINES TO REPORT TO THE MINISTER WITH RESPECT TO THOSE TWO COMPANIES.

INDEXED ENDORSEMENT - SECTION 47A

17046-69-M: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 (APPLICANT) v. THE BORDEN COMPANY LIMITED, SILVERWOOD DAIRIES LIMITED, RETAIL WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 440, A.F.L., C.I.O., C.L.C. (RESPONDENTS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG AND S. POWERS FOR THE APPLICANT; NO ONE FOR THE BORDEN COMPANY LIMITED; JOHN P. SANDERSON AND K. E. PERRIN FOR SILVERWOOD DAIRIES LIMITED; A. S. GLEASON FOR RETAIL WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 440, A.F.L., C.I.O., C.L.C.

DECISION OF THE BOARD: JANUARY 6, 1970.

1. THE BOARD FINDS THAT THE APPLICANT AND THE RESPONDENT, RETAIL WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 440, A.F.L., C.I.O., C.L.C., ARE TRADE UNIONS WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

2. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 47A OF THE LABOUR RELATIONS ACT.

3. THE FACTS OF THIS CASE ARE NOT IN DISPUTE.

4. Having regard to the agreed facts and the representations of the parties, the Board finds that the respondent, The Borden Company Limited, sold, within the meaning of section 47a(1) of the Act, that portion of its business which may be described as the home delivery routes in the Brantford area of The Borden Company Limited to Silverwood Dairies Limited, as of December 1, 1969. Subsequently, the respondent, Silverwood Dairies Limited, intermingled, within the meaning of section 47a(5), the ten employees who were formerly employed by The Borden Company Limited, and who were represented by the applicant, with the twenty-six employees of Silverwood Dairies Limited at Brantford who were represented by Retail Wholesale and Department Store Union, Local 440, A.F.L., C.I.O., C.L.C.

5. The Board accordingly determines, in the circumstances of this case, that the intermingled employees constitute one appropriate bargaining unit.

6. The Board therefore finds that all employees of the respondent, Silverwood Dairies Limited, employed at or working out of its branch in the City of Brantford, save and except foremen, route foremen, persons above the rank of foreman or route foreman, office staff, sales supervisors, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period, constitute a unit of employees of Silverwood Dairies Limited appropriate for collective bargaining.

7. Pursuant to the provisions of section 47a(7), and for the purposes of determining which trade union shall be the bargaining agent of employees of Silverwood Dairies Limited in the bargaining unit, the Board directs that a representation vote be taken of the employees of Silverwood Dairies Limited in the bargaining unit. All employees of Silverwood Dairies Limited in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

8. Voters will be given a choice between the applicant and Retail Wholesale and Department Store Union, Local 440, A.F.L., C.I.O., C.L.C.

9. The matter is referred to the Registrar.

INDEXED ENDORSEMENTS - SECTION 79(2)

16832-69-M: Local #717, Textile Workers Union of America, CLC, AFL-CIO (Applicant) v. KROY UNSHRINKABLE WOOLS, LIMITED, TORONTO OF HARVEY WOODS LIMITED, WOODSTOCK, ONTARIO (Respondent).

BEFORE: J. D. O'Shea, Vice-Chairman, and Board Members O. Hodges and H. F. Irwin.

DECISION OF THE BOARD: January 6, 1970.

1. This is an application for relief under section 79(2) of The Labour Relations Act.

. . .

4. Having regard to the fact that the parties have agreed that Mrs. Lydia Panow does not exercise managerial functions nor is she employed in a confidential capacity in matters relating to labour relations, we therefore declare, pursuant to the provisions of section 79(2), that Mrs. Lydia Panow is an employee of the respondent for the purposes of the Act. The dispute with respect to Mrs. Panow appears to be whether or not Mrs. Panow is excluded from the bargaining unit represented by the applicant by reason of the fact she is part of the office staff. The Board has no jurisdiction to determine this issue under section 79(2) of the Act. The issue as to whether or not Mrs. Panow is included in the bargaining unit covered by the collective agreement between the parties is a matter to be determined under the terms of that collective agreement.

16833-69-M: The Canadian Union of Public Employees - CLC, Ontario Hydro Employees' Union, Local 1000 (Applicant) v. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (Respondent).

BEFORE: J. D. O'Shea, Vice-Chairman, and Board Members O. Hodges and H. F. Irwin.

DECISION OF THE BOARD: January 6, 1970.

1. This is an application under section 79(2) of The Labour Relations Act wherein an Examiner was appointed to inquire into the duties and responsibilities of certain persons who are in dispute.

2. The Examiner, on behalf of the parties, has requested the Board to give a direction as to the extent of the inquiry into the duties and responsibilities of the persons in dispute, which direction will serve as a guide to the parties.

3. If the collective agreement is silent on the question of the inclusion or exclusion of the disputed persons, a full inquiry into their duties and responsibilities will be necessary.

4. IF, HOWEVER, THE COLLECTIVE AGREEMENT SPECIFICALLY INCLUDES OR EXCLUDES CERTAIN PERSONS OR CLASSIFICATIONS IT WILL BE NECESSARY FOR THE PARTY, WHO SEEKS TO ALTER THE APPLICATION OF THE COLLECTIVE AGREEMENT WITH RESPECT TO SUCH PERSONS OR CLASSIFICATIONS, TO ESTABLISH THAT THERE HAS BEEN A MATERIAL CHANGE IN THE DUTIES AND RESPONSIBILITIES OF THE DISPUTED PERSONS BY REASON OF WHICH THE PARTIES CAN NO LONGER BE SAID TO BE BOUND BY THEIR AGREEMENT TO INCLUDE OR EXCLUDE SUCH PERSONS OR CLASSIFICATIONS FROM THE COLLECTIVE AGREEMENT. UNLESS SUCH A CHANGE HAS TAKEN PLACE, NO QUESTION CAN ARISE WITH RESPECT TO SUCH PERSONS OR CLASSIFICATIONS UNDER SECTION 79(2) OF THE ACT, SINCE A PARTY CANNOT UNILATERALLY REPUDIATE THE PROVISIONS OF THE COLLECTIVE AGREEMENT ENTERED INTO. IN THIS REGARD, THE BOARD IN ITS DECISION DATED NOVEMBER 12, 1969, IN THE BORDEN COMPANY LTD. CASE, BOARD FILE 16470-69-M, STATED AS FOLLOWS:

> THE EXAMINER ALSO INQUIRED INTO AND REPORTED TO THE BOARD ON THE EXTENT OF CHANGE, IF ANY, IN THE DUTIES AND RESPONSIBILITIES OF CERTAIN PERSONS WHOSE CLASSIFICATIONS WERE EXCLUDED FROM THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT WHICH HAS TAKEN PLACE SINCE DECEMBER 1967, THE DATE THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES WAS EXECUTED. IT WAS THE APPLICANT'S POSITION THAT BECAUSE OF CERTAIN ADMINISTRATIVE CHANGES MADE BY THE RESPONDENT FOLLOWING THE EXECUTION OF THE COLLECTIVE AGREEMENT, THE DUTIES AND RESPONSIBILITIES OF THE PERSONS IN DISPUTE HAVE SUBSTANTIALLY CHANGED. THE APPLICANT ARGUED THAT AS A RESULT OF THE ALLEGED CHANGE IN THEIR DUTIES AND RESPONSIBILITIES THE APPLICANT SHOULD NOT BE BOUND BY ANY AGREEMENT OR FINDING OF THE BOARD WITH RESPECT TO THE STATUS OF THE PERSONS IN DISPUTE, SINCE THE CHANGES IN THEIR JOBS CAUSED THE DUTIES AND RESPONSIBILITIES NOW EXERCISED BY THEM TO BE DUTIES AND RESPONSIBILITIES OF EMPLOYEES FOR THE PURPOSES OF THE ACT. IT IS THE APPLICANT'S POSITION THAT THE PERSONS IN THE DISPUTED CLASSIFICATIONS HAVE, AS A RESULT OF THE ALLEGED CHANGES, CEASED TO EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT.
>
> BEFORE DEALING WITH THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT, IT SHOULD BE NOTED THAT THE BOARD CAN ONLY CONCERN ITSELF WITH THE EVIDENCE OF ANY CHANGES THAT HAVE TAKEN PLACE SINCE THE DATE THE COLLECTIVE AGREEMENT WAS ENTERED INTO.

THE BOARD HAS NO APPELLATE JURISDICTION OVER FINDINGS MADE BY ANOTHER DIVISION OF THE BOARD AT THE TIME THE APPLICANT WAS CERTIFIED AND CANNOT THEREFORE CONSIDER THE EVIDENCE AS TO THE DUTIES AND RESPONSIBILITIES OF THE DISPUTED CLASSIFICATIONS AB INITIO. AGAIN, THE BOARD WILL NOT PERMIT ONE OF THE PARTIES TO UNILATERALLY REPUDIATE AN AGREEMENT THAT A CERTAIN PERSON BE EXCLUDED FROM THE BARGAINING UNIT BECAUSE OF HIS MANAGERIAL FUNCTIONS. IN ORDER THAT THE APPLICANT SUCCEED IN THIS MATTER, IT MUST ESTABLISH THAT SINCE THE DATE THE COLLECTIVE AGREEMENT WAS ENTERED INTO THERE HAVE BEEN SUBSTANTIAL CHANGES IN THE DUTIES AND RESPONSIBILITIES OF THE DISPUTED PERSONS AND THAT SUCH CHANGES HAVE CAUSED THEIR DUTIES AND RESPONSIBILITIES TO CEASE TO BE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT.

5. IT THEREFORE FOLLOWS THAT WHERE IT IS ALLEGED THAT THERE HAS BEEN A MATERIAL CHANGE IN THE DUTIES AND RESPONSIBILITIES OF CERTAIN PERSONS OR CLASSIFICATIONS WHO ARE SPECIFICALLY INCLUDED OR EXCLUDED UNDER THE TERMS OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES, THAT THE BOARD IS ONLY INTERESTED IN THE NATURE AND EXTENT OF THE CHANGES IN THE DUTIES AND RESPONSIBILITIES OF SUCH PERSONS OR CLASSIFICATIONS AND THE EVIDENCE ADDUCED AT THE EXAMINER'S INQUIRY SHOULD BE DIRECTED TO THESE ISSUES. ANY EVIDENCE CONCERNING THE BROAD SPECTRUM OF THE DUTIES AND RESPONSIBILITIES, WHICH HAS NOTHING TO DO WITH ANY ALLEGED CHANGES, IS NOT RELEVANT TO AN INQUIRY UNDER SECTION 79(2) OF THE ACT IN THESE CIRCUMSTANCES.

6. MR. J. R. HENDERSON, EXAMINER, IS ACCORDINGLY DIRECTED TO PROCEED WITH HIS INQUIRY AS AUTHORIZED BY THE BOARD'S DECISION DATED OCTOBER 22, 1969, IN THIS MATTER.

INDEXED ENDORSEMENT - JURISDICTIONAL DISPUTE

17161(A)-69-JD: ABE DICK MASONRY LIMITED (COMPLAINANT) V. LOCAL UNION 18, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AND INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 837 (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. D. PERKINS AND A. DICK FOR THE COMPLAINANT; STANLEY SIMPSON AND C. GUAGLIANO FOR LOCAL 18; SIDNEY ROBINS, H. MANCINELLI AND M.J. REILLY FOR LOCAL 837.

DECISION OF THE BOARD: JANUARY 14, 1970.

1. THE COMPLAINANT IN ITS COMPLAINT IS REQUESTING THAT THE BOARD MAKE AN INTERIM ORDER WITH RESPECT TO AN ASSIGNMENT OF WORK WHICH IS IN DISPUTE BETWEEN THE COMPLAINANT AND THE RESPONDENT TRADE UNIONS.

2. THE BOARD IS SATISFIED THAT A STRIKE IS IMMINENT BY REASON OF THE ASSIGNMENT OF THE WORK WHICH IS THE SUBJECT MATTER OF THE INSTANT DISPUTE.

3. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE FOLLOWING INTERIM ORDER:

> ABE DICK MASONRY LIMITED SHALL CONTINUE TO ASSIGN THE WORK INVOLVED IN THE ERECTION OF TUBULAR METAL SCAFFOLDING TO BE USED BY BRICKLAYERS IN BUILDING A THREE STOREY SCHOOL TO BE KNOWN AS CHRIST THE KING SCHOOL ON HUNT STREET, HAMILTON, NEAR THE INTERSECTION OF KING STREET AND HWY. 403 TO MEMBERS OF INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 837.

4. THIS ORDER SHALL BECOME EFFECTIVE FORTHWITH AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE BOARD ISSUES A FURTHER DIRECTION.

17280(A)-69-JD: STEWART & HINAN CONSTRUCTION LIMITED (COMPLAINANT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION #38, AND INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 736 (RESPONDENTS) V. BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL 4 (INTERVENER #1) V. LABORER'S INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (INTERVENER #2).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. D. PERKINS AND V. R. THORPE FOR THE COMPLAINANT; W. HAGUE FOR THE RESPONDENT CARPENTERS LOCAL UNION #38; K. CHILDS AND H. LEBRASSEUR FOR THE RESPONDENT IRON WORKERS UNION LOCAL 736; D. WILLIAMS AND J. MOLLICA FOR INTERVENER #1, G. ALLEN FOR INTERVENER #2.

DECISION OF THE BOARD: JANUARY 30, 1970.

. . .

2. THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL 4 ARE ADDED AS A PARTY TO THIS PROCEEDING AS INTERVENER #1.

3. THE LABORER'S INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 ARE ADDED AS A PARTY TO THIS PROCEEDING AS INTERVENER #2.

4. THIS IS A COMPLAINT MADE UNDER SECTION 66 OF THE LABOUR RELATIONS ACT.

5. THE COMPLAINANT IN ITS COMPLAINT IS REQUESTING THAT THE BOARD MAKE AN INTERIM ORDER WITH RESPECT TO AN ASSIGNMENT OF WORK WHICH IS IN DISPUTE BETWEEN THE COMPLAINANT AND THE RESPONDENT TRADE UNIONS.

6. BASED ON THE EVIDENCE BEFORE US, THE BOARD FINDS THAT THE COMPLAINANT HAD IN ITS EMPLOY AT THE TIME THE WORK ASSIGNMENT DISPUTE AROSE ON JANUARY 16, 1970, MEMBERS OF BOTH OF THE RESPONDENT TRADE UNIONS. PURSUANT TO SECTION 66(1) OF THE ACT, THE BOARD ACCORDINGLY FINDS THAT IT HAS JURISDICTION TO ENTERTAIN THE COMPLAINT. (BOARD MEMBER EDMUND BOYER RESERVED HIS DECISION ON THE ABOVE ISSUE OF THE BOARD'S JURISDICTION TO ENTERTAIN THE COMPLAINT.)

7. BASED ON THE EVIDENCE ADDUCED AT THE HEARING, THE BOARD IS SATISFIED THAT A STRIKE IS TAKING PLACE BY REASON OF THE ASSIGNMENT OF WORK WHICH IS THE SUBJECT MATTER OF THIS DISPUTE.

8. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE FOLLOWING INTERIM ORDER:

> THE COMPLAINANT, STEWART & HINAN CONSTRUCTION LIMITED, SHALL CONTINUE TO ASSIGN THE WORK OF LIFTING AND PLACING OF THE CONCRETE BLOCKS BEING USED IN THE CONSTRUCTION OF REFRACTORY FURNACES ON THE PROJECT FOR UNION CARBIDE (CANADA) LIMITED, KNOWN AS "GRAPHITE EXPANSION 1968", LOCATED AT CANAL BANK IN WELLAND TO A COMPOSITE CREW COMPOSED OF MEMBERS OF THE RESPONDENT UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION #38 AND THE RESPONDENT INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 736 ON A ONE TO ONE RATIO.
>
> THIS ORDER SHALL BECOME EFFECTIVE FORTHWITH AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE BOARD ISSUES A FURTHER DIRECTION.

17280(B)-69-JD: STEWART & HINAN CONSTRUCTION LIMITED (APPLICANT) v. INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 736 (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. D. PERKINS AND V. R. THORPE FOR THE APPLICANT; K. CHILDS AND H. LEBRASSEUR FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 30, 1970.

1. THIS IS AN APPLICATION MADE PURSUANT TO SUBSECTION (3) OF SECTION 66 OF THE LABOUR RELATIONS ACT FOR A CEASE AND DESIST ORDER.

2. THE APPLICANT IS REQUESTING THAT THE BOARD ISSUE A DIRECTION THAT THE RESPONDENT CEASE AND DESIST FROM DOING ANYTHING INTENDED OR LIKELY TO INTERFERE WITH THE TERMS OF AN INTERIM ORDER OF EVEN DATE HEREWITH WHICH INTERIM ORDER WAS FILED IN THE OFFICE OF THE REGISTRAR OF THE SUPREME COURT OF ONTARIO ON JANUARY 30, 1970.

3. THE INTERIM ORDER, EXCLUSIVE OF THE REASONS ISSUED BY THE BOARD, READS:

> THE COMPLAINANT, STEWART & HINAN CONSTRUCTION LIMITED, SHALL CONTINUE TO ASSIGN THE WORK OF LIFTING AND PLACING OF THE CONCRETE BLOCKS BEING USED IN THE CONSTRUCTION OF REFRACTORY FURNACES ON THE PROJECT FOR UNION CARBIDE (CANADA) LIMITED, KNOWN AS "GRAPHITE EXPANSION 1968", LOCATED AT CANAL BANK IN WELLAND TO A COMPOSITE CREW COMPOSED OF MEMBERS OF THE RESPONDENT UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION #38 AND THE RESPONDENT INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 736 ON A ONE TO ONE RATIO.
>
> THIS ORDER SHALL BECOME EFFECTIVE FORTHWITH AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE BOARD ISSUES A FURTHER DIRECTION.

4. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE FOLLOWING CEASE AND DESIST DIRECTION:

THE INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 736, ITS OFFICERS, OFFICIALS OR AGENTS SHALL CEASE AND DESIST FROM DOING ANYTHING INTENDED OR LIKELY TO INTERFERE WITH THE TERMS OF THE INTERIM ORDER OF THE BOARD DATED JANUARY 30, 1970.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION -

CERTIFICATION

16760-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. SANDERCOCK CONSTRUCTION LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: W.I.C. BINNIE AND C.J. VANDERLAAN FOR THE APPLICANT; R. KOSKIE, H. HERRON AND H. GILLIS FOR THE INTERVENER; NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 12, 1970.

1. THE INTERVENER REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED OCTOBER 6, 1969 CERTIFYING THE APPLICANT AS THE BARGAINING AGENT FOR A GROUP OF THE RESPONDENT'S EMPLOYEES IN THE COUNTY OF LAMBTON. THE MATTER WAS PUT ON FOR HEARING TO ENABLE THE INTERVENER TO SHOW CAUSE WHY THE BOARD SHOULD RECONSIDER ITS DECISION. AT THE HEARING THE INTERVENER TENDERED EVIDENCE AND THE BOARD ALSO HAD THE BENEFIT OF EXTENSIVE REPRESENTATIONS BY THE APPLICANT AND INTERVENER.

2. THE GROUNDS FOR RECONSIDERATION ARE TWO IN NUMBER. THE FIRST CONSISTS OF ALLEGATIONS THAT A MEMBER OF MANAGEMENT OR AT LEAST A PERSON CONSIDERED BY EMPLOYEES TO BE A PART OF MANAGEMENT PARTICIPATED IN THE ORGANIZATIONAL CAMPAIGN CONDUCTED BY THE APPLICANT. THE SECOND GROUND ALLEGES NON-PAY - THAT IS, THAT CERTAIN EMPLOYEES CLAIMED BY THE APPLICANT AS MEMBERS DID NOT PAY ANY MONEY ON THEIR OWN BEHALF TOWARDS INITIATION FEES OR DUES. WE PROPOSE TO DEAL WITH THESE GROUNDS SEPARATELY.

3. As appears in the Board's decision dated October 6, 1969, the intervener filed an intervention in which it made vague references to unfair labour practices and requested the Board to order a vote. After considering the evidence and the representations of the parties we are satisfied that the intervener's representative who filed the intervention was aware at that time of the sum and substance of the subsequent allegations. While it is true that he was not aware of all the details of the charges, he was, in our opinion, in possession of sufficient information to include specific allegations of misconduct in the intervention. At the very least he ought to have requested an extension of time in which to file an intervention. Instead, the intervention, as noted above, merely referred in a vague way to unfair labour practice and asked for a vote. In addition, the intervener consented to the Board dealing with the application without a hearing by the Board. By way of explanation the intervener's representative stated that he knew the Board had a discretion and he was relying on the Board to exercise its discretion. The representative in question has had considerable experience before the Board and, in the light of his knowledge at the time he filed the intervention, he cannot now, in our view, be heard to complain of the way in which the Board in fact exercised its discretion on the basis of the material then before it. Accordingly, the request of the intervener based on the first ground of its allegations is denied.

4. The second of the intervener's grounds raises the question of non-pay. The Board has always treated allegations of this nature as ones involving potential fraud of the Board's processes and, accordingly, has not applied the usual test of reasonable promptness with respect to the time of the making of the allegations. Thus it is not uncommon to find a party making such allegations some days after the conclusion of a hearing and it has not been Board practice to inquire into the reason why the allegations were not made earlier. Having regard to these considerations, we decided to conduct our usual inquiries with respect to those persons named by the intervener and claimed by the applicant as members.

5. In the result, the Registrar is directed to list this matter for hearing for the purpose of inquiring into the circumstances surrounding the obtaining of the membership evidence of Donald S. Penhale. More specifically, the Board will inquire into the question as to whether Penhale paid any money on his own behalf towards his initiation fees. The following persons, who it is believed may have knowledge of this matter, will be summoned to attend the hearing: Joseph Ether, C. John Vanderlaan.

6. AT THE SHOW-CAUSE HEARING HELD EARLIER THE INTERVENER ADDUCED ORAL EVIDENCE RESPECTING ITS INTEREST IN THESE PROCEEDINGS AS OF SEPTEMBER 25, 1969 AND WAS PREPARED TO FILE CERTAIN DOCUMENTARY EVIDENCE IN SUPPORT OF ITS CLAIM THAT THE EMPLOYEES WERE MEMBERS OF THE INTERNATIONAL ON THAT DATE. THE BOARD DECLINED TO ACCEPT THE DOCUMENTS AT THAT TIME. THE INTERVENER SHOULD NOW FILE THAT EVIDENCE WITH THE BOARD.

16862-69-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) v. SPUN-METALS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

DECISION OF THE BOARD: JANUARY 21, 1970.

1. THE APPLICANT BY LETTER DATED JANUARY 10, 1970 HAS REQUESTED THE BOARD TO AMEND THE DESCRIPTION OF THE BARGAINING UNIT TO INCLUDE ALL EMPLOYEES OF THE RESPONDENT IN AND AROUND METROPOLITAN TORONTO. THE APPLICANT ARGUES THAT SUCH DESCRIPTION WOULD INCLUDE IN THE GEOGRAPHIC AREA OF THE BARGAINING UNIT A NEW PLANT WHICH THE RESPONDENT MAY BE MOVING TO IN VAUGHAN TOWNSHIP IN FEBRUARY OR MARCH OF 1970. THE APPLICANT ARGUES THAT THIS FACT WAS KNOWN TO THE RESPONDENT AT THE TIME OF THE PREHEARING VOTE MEETING AND ALTHOUGH THE RESPONDENT HAD ORIGINALLY PROPOSED THE BARGAINING UNIT BE DESCRIBED IN THOSE TERMS, THE RESPONDENT AGREED TO AMEND ITS PROPOSED BARGAINING UNIT TO DESCRIBE THE GEOGRAPHIC AREA AS ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO. IT IS THE APPLICANT'S POSITION THAT IF THE BOARD HAD BEEN MADE AWARE OF THE FACT OF THE PROPOSED MOVE OF THE RESPONDENT FROM METROPOLITAN TORONTO TO VAUGHAN TOWNSHIP, THE BOARD WOULD HAVE DESCRIBED THE BARGAINING UNIT IN THIS CASE AS ALL EMPLOYEES OF THE RESPONDENT IN AND AROUND METROPOLITAN TORONTO.

2. THE BOARD CANNOT AGREE WITH THE APPLICANT'S SUGGESTION THAT THE BOARD WOULD HAVE DESCRIBED THE BARGAINING UNIT AS ALL EMPLOYEES OF THE RESPONDENT IN AND AROUND METROPOLITAN TORONTO IF IT HAD BEEN MADE AWARE OF THE FACT THAT THE RESPONDENT PROPOSED TO MOVE ITS PLANT FROM METROPOLITAN TORONTO TO VAUGHAN TOWNSHIP. THERE WERE NO EMPLOYEES OF THE RESPONDENT INVAUGHAN TOWNSHIP ON THE DATE THE APPLICATION WAS MADE AND FOR THIS REASON THE BOARD WOULD NOT CERTIFY THE APPLICANT FOR EMPLOYEES IN VAUGHAN TOWNSHIP. IT IS THE BOARD'S REGULAR PRACTICE TO RESTRICT BARGAINING UNITS TO SPECIFIC GEOGRAPHIC AREAS WHERE THE EMPLOYEES ARE EMPLOYED AT THE TIME THE APPLICATION WAS MADE. AT ONE TIME THE BOARD CERTIFIED UNIONS FOR ALL EMPLOYEES IN THE CITY OF TORONTO. HOWEVER, IN VIEW OF THE FACT THAT THERE WERE INCREASING INCIDENTS OF COMPANIES TRANSFERRING THEIR OPERATIONS TO LARGER PLANTS IN THE SUBURBAN AREA

IMMEDIATELY ADJACENT TO TORONTO, THE BOARD ADOPTED THE PRACTICE OF CERTIFYING UNIONS FOR METROPOLITAN TORONTO RATHER THAN THE CITY OF TORONTO. THE BOARD HAS NOT ENLARGED THE GEOGRAPHIC AREA FOR BARGAINING UNITS IN METROPOLITAN TORONTO TO INCLUDE AREAS OUTSIDE OF OR ADJACENT TO METROPOLITAN TORONTO. APART FROM THE FACT THAT THE WORDS IN AND AROUND ARE TOO INDEFINITE TO ADEQUATELY DESCRIBED AN APPROPRIATE BARGAINING UNIT, THE BOARD HAS NEVER ADOPTED THE PRACTICE OF INCLUDING MORE THAN ONE GEOGRAPHIC AREA IN A BARGAINING UNIT EXCEPT ON AGREEMENT OF THE PARTIES OR WHERE IT HAS BEEN ESTABLISHED THAT EMPLOYEES IN THE TWO LOCALITIES ARE SO INTEGRATED THAT THEY FORM ONE APPROPRIATE BARGAINING UNIT.

3. ON THE FACTS OF THIS CASE, WE FIND THAT THE ONLY REASON PUT FORWARD BY THE APPLICANT FOR INCLUDING ANOTHER GEOGRAPHIC AREA WITH METROPOLITAN TORONTO IS THE FACT THAT THE APPLICANT IS CONTEMPLATING A MOVE TO THE SECOND GEOGRAPHIC AREA. THIS FACT ALONE IS NOT SUFFICIENT TO CAUSE THE BOARD TO DEPART FROM ITS REGULAR PRACTICE OF CONFINING BARGAINING UNITS TO METROPOLITAN TORONTO.

4. FOR THESE REASONS, THE BOARD IS NOT PREPARED TO AMEND THE DESCRIPTION OF THE BARGAINING UNIT CONTAINED IN THE BOARD'S DECISION DATED NOVEMBER 24, 1969 IN THIS MATTER AS REQUESTED BY THE APPLICANT AND THE APPLICANT'S REQUEST CONTAINED IN ITS LETTER OF JANUARY 10, 1970 IS ACCORDINGLY DENIED.

17061-69-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) v. LEWIS MOTORS (OTTAWA) LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

DECISION OF THE BOARD: JANUARY 22, 1970.

1. BY LETTER DATED JANUARY 15, 1970, COUNSEL FOR THE RESPONDENT REQUESTED THAT THE BOARD RECONSIDER ITS DECISION OF JANUARY 7, 1970, ALLEGING THAT TWO SIGNIFICANT STATEMENTS MADE BY THE BOARD IN ITS DECISION ARE NOT IN ACCORD WITH THE EVIDENCE PRESENTED AT THE HEARING ON JANUARY 6, 1970.

2. MORE PARTICULARLY, COUNSEL FOR THE RESPONDENT QUOTED THE FIRST SENTENCE OF PARAGRAPH 8 OF THE BOARD'S DECISION OF JANUARY 7, 1970, WHICH READS: "WITH REFERENCE TO THE INSTANT APPLICATION, ACCORDING TO THE EVIDENCE, A NEW LOCAL, NUMBERED 517,

WAS DESIGNATED BY THE APPLICANT AS BEING THE LOCAL TO WHICH THE EMPLOYEES IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE WOULD BECOME MEMBERS UPON CERTIFICATION BY THIS BOARD." COUNSEL FOR THE RESPONDENT SUBMITS THAT THIS WAS NOT THE EVIDENCE AND THAT IT WAS ADMITTED BY THE APPLICANT THAT THERE WAS NO LOCAL 517 IN EXISTENCE AT THE DATE OF THE BOARD HEARING.

3. WE AGREE WITH THE SUBMISSION OF COUNSEL FOR THE RESPONDENT THAT ACCORDING TO THE EVIDENCE LOCAL 517 WAS NOT IN EXISTENCE AS OF THE DATE OF THE HEARING AND THAT THE NUMBER 517 HAD ONLY BEEN DESIGNATED FOR A LOCAL TO BE ESTABLISHED AT A LATER DATE. WHILE WE RECOGNIZE THAT THE ABOVE QUOTED SENTENCE IS OPEN TO THE INTERPRETATION PLACED UPON IT BY COUNSEL FOR THE RESPONDENT, IT WAS NOT OUR INTENTION TO CONVEY THE IMPRESSION THAT SUCH A LOCAL HAD ACTUALLY BEEN CHARTERED OR OFFICERS ELECTED AS OF THE HEARING DATE. BY INFERENCE, AT LEAST, PARAGRAPH 9 OF OUR DECISION OF JANUARY 7, 1970 MAKES IT APPARENT THAT THE BOARD WAS AWARE THAT THE NUMBER 517 ONLY HAD BEEN DESIGNATED AT THE TIME OF THE HEARING AND THE BOARD'S DECISION IS PREMISED ON THAT FACT.

4. COUNSEL FOR THE RESPONDENT IN HIS LETTER OF JANUARY 15, 1970 ALSO QUOTED THE FOLLOWING SENTENCES FROM PARAGRAPH 8: "COUNSEL FOR THE APPLICANT CITED TEN APPLICATIONSFOR CERTIFICATION IN WHICH THE BOARD HAS CERTIFIED THE APPLICANT AS BARGAIN ING AGENT FOR IDENTICAL OR VERY SIMILAR UNITS OF EMPLOYEES TO THAT FOUND TO BE APPROPRIATE IN THE INSTANT APPLICATION. ACCORDING TO THE EVIDENCE, IN ALL OF THE PREVIOUS CASES, SUBSEQUENT TO CERTIFICATION, THE EMPLOYEES ELECTED OFFICERS AND APPLIED FOR AND WERE GRANTED A LOCAL CHARTER PURSUANT TO ARTICLE 19 OF THE CONSTITUTION." COUNSEL ADVISED THE BOARD THAT THE REPRESENTATIVES OF THE RESPONDENT AT THE HEARING HAD NO NOTATION OR RECOLLECTION OF THIS EVIDENCE.

5. ACCORDING TO THE BOARD'S NOTATIONS AND RECOLLECTIONS, COUNSEL FOR THE APPLICANT ADVISED THE BOARD THAT IN THE TEN CASES WHICH HE CITED NO ARGUMENT HAD BEEN RAISED AS TO THE ABILITY OF THE APPLICANT PARENT NATIONAL UNION TO TAKE PERSONS INTO MEMBERSHIP. THE REPRESENTATION OF COUNSEL FOR THE APPLICANT, HOWEVER, WAS THAT IT WAS THE PRACTICE OF THE APPLICANT IN VIRTUALLY ALL CASES TO TAKE THE EMPLOYEES CONCERNED INTO MEMBERSHIP AND SUBSEQUENTLY ASSIGN THEM TO A DESIGNATED LOCAL. COUNSEL'S REPRESENTATIONS OF FACT IN THIS REGARD WERE CORROBORATED BY THE VIVA VOCE EVIDENCE OF JAMES LEVIA, AN ACCREDITED REPRESENTATIVE OF THE APPLICANT, WHICH EVIDENCE IS SET OUT IN PARAGRAPH 7 OF THE BOARD'S DECISION OF JANUARY 7, 1970. IT WAS ON THIS BASIS THAT THE BOARD MADE THE FINDINGS OF FACT QUOTED IN THE ABOVE PARAGRAPH.

6. COUNSEL FOR THE RESPONDENT FURTHER SUBMITS THAT THE REPRESENTATION ATTRIBUTED TO HIM IN THE LAST SENTENCE OF PARAGRAPH 5 OF THE BOARD'S DECISION OF JANUARY 7, 1970, IN FACT, WAS MADE BY COUNSEL FOR THE APPLICANT RATHER THAN HIMSELF AND EXPRESSED THE DESIRE TO HAVE IT SO RECORDED. THE SENTENCE IN QUESTION READS: "COUNSEL ALSO REFERRED THE BOARD TO SECTION A (10) OF ARTICLE 8 OF THE APPLICANT'S CONSTITUTION WHICH PROVIDES THAT THE NATIONAL PRESIDENT SHALL HAVE AUTHORITY, NOTWITHSTANDING THE PROVISIONS OF ARTICLE 5, SECTION B, TO ASSIGN NEWLY ORGANIZED GROUPS INTO MEMBERSHIP IN ESTABLISHED LOCALS."

7. THE BOARD'S RECORD OF THE PROCEEDINGS SHOW THAT BOTH COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE RESPONDENT MADE REPRESENTATIONS WITH RESPECT TO SECTION A(10) OF ARTICLE 8 OF THE APPLICANT'S CONSTITUTION. THE BOARD CHOSE ONLY TO REFER TO THE ARGUMENT ADVANCED BY COUNSEL FOR THE RESPONDENT WHEREIN HE EMPHASIZED THAT ACCORDING TO THE SECTION THE NATIONAL PRESIDENT COULD ONLY ASSIGN NEWLY ORGANIZED GROUPS INTO MEMBERSHIP IN ESTABLISHED LOCALS. THE SUBMISSIONS OF COUNSEL FOR THE APPLICANT IN REPLY TO THIS ARGUMENT ARE SET OUT IN PARAGRAPH 6 OF THE BOARD'S DECISION. MORE SPECIFICALLY, COUNSEL FOR THE APPLICANT NOTED THAT BY THE PROVISIONS OF SECTION A(1) "WORKERS WHO ARE MEMBERS OF OR ELIGIBLE FOR MEMBERSHIP IN THE BROTHERHOOD, MAY APPLY FOR A CHARTER AS A LOCAL". BY SECTION A(2) SUCH APPLICATION IS MADE TO THE NATIONAL PRESIDENT AND IF HE APPROVES OF THE APPLICATION THE CHARTER IS ISSUED. THE BOARD DEALT WITH ALL OF THESE SUBMISSIONS IN PARAGRAPHS 10 AND 11 OF ITS DECISION OF JANUARY 7, 1970.

8. THE BOARD IS SATISFIED THAT THE FINDINGS OF FACT SET OUT IN ITS DECISION OF JANUARY 7, 1970 ARE IN ACCORD WITH THE EVIDENCE BEFORE IT. FURTHER, THE BOARD FULLY CONSIDERED ALL OF THE ARGUMENTS ADVANCED BY COUNSEL FOR BOTH PARTIES. THE BOARD ACCORDINGLY FINDS NO REASON TO REVISE OR REVOKE ITS DECISION OF JANUARY 7, 1970.

9. THE REQUEST OF COUNSEL FOR THE RESPONDENT ACCORDINGLY IS DENIED.

EXCERTPS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

17099-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) v. NORDIC AIRHALLS OF CANADA LTD. (RESPONDENT).

7. WITH RESPECT TO REPRESENTATIONS MADE BY THE RESPONDENT IN ITS LETTER OF JANUARY 6TH, 1970, IT ISPOINTED OUT THAT UNDER SECTION 7 OF THE LABOUR RELATIONS ACT THE BOARD IS ONLY REQUIRED TO ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION, WHICH IN THE INSTANT

CASE IS DECEMBER 12TH, 1969. THE FACT THAT THE RESPONDENT HAS AT THE PRESENT TIME ONLY ONE EMPLOYEE, OR THAT IT DOES NOT ANTICIPATE HIRING LABOUR IN THE FUTURE, ARE MATTERS THAT ARE MORE PROPERLY THE SUBJECT OF COLLECTIVE BARGAINING ONCE THE APPLICANT IS CERTIFIED.

(JANUARY 7, 1970).

17131-69-R: BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION, LOCAL UNION NO. 7, OTTAWA, ONTARIO (APPLICANT) v. OMEGA INVESTMENTS LTD. (RESPONDENT).

4. THE APPLICANT IN THIS CASE IS LOCAL UNION 7. THE EVIDENCE OF MEMBERSHIP FILED IN SUPPORT OF THE APPLICATION IS FIVE COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. THE APPLICATIONS ARE FOR MEMBERSHIP IN THE BRICKLAYERS, MASONS, AND PLASTERERS' INTERNATIONAL UNION OF AMERICA. THERE IS A PLACE ON THE APPLICATION FORMS WHERE THE APPLICANT CAN SPECIFY A LOCAL UNION NUMBER. THESE SPACES ARE BLANK ON FOUR OF THE COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS AND ON THE FIFTH COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT THE SPACE IS OCCUPIED BY A NINE DIGIT NUMBER, POSSIBLY REPRESENTING THE SOCIAL INSURANCE NUMBER OF THE APPLICANT FOR MEMBERSHIP. MOREOVER, THERE IS NO REFERENCE TO LOCAL 7 ON THE RECEIPTS ATTACHED TO THE APPLICATION FORMS. THE EVIDENCE OF MEMBERSHIP, THEREFORE, CANNOT BE CONSIDERED AS EVIDENCE OF MEMBERSHIP IN THE APPLICANT LOCAL UNION 7. EVEN IF THE COMBINATION APPLICATIONS AND RECEIPTS ARE CONSIDERED AS EVIDENCE OF MEMBERSHIP IN THE INTERNATIONAL ASSOCIATION, THIS STILL DOES NOT HELP THE APPLICANT AS THE BOARD HAS HELD THAT EVIDENCE OF MEMBERSHIP IN A PARENT UNION IS NOT PER SE EVIDENCE OF MEMBERSHIP IN A PARTICULAR LOCAL (SEE MILSOM FLOORS LIMITED CASE O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966 P. 419 AND BEAVER FOUNDATION LTD. CASE O.L.R.B. MONTHLY REPORT, OCTOBER 1967 P. 652).

(JANUARY 6, 1970).

BRUARY, 1970



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UNIVERSITY OF TORONTO

NTARIO LABOUR RELATIONS BOARD

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DURING FEBRUARY 1970

BARGAINING AGENTS CERTIFIED DURING FEBRUARY

No Vote Conducted

15917-68-R: Nurses' Association Ajax & Pickering General Hospital (Applicant) v. Ajax And Pickering General Hospital (Respondent).

Unit: "all registered and graduate nurses employed by the respondent, save and except Assistant Director of Nursing and those persons above the rank of Assistant Director of Nursing." (86 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 1283).

16005-69-R: Labourers' International Union of North America, Local 183 (Applicant) v. Davey Tree Expert Company of Canada Limited (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (13 employees in the unit).

(THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT WORKING FOREMEN ARE INCLUDED IN THE BARGAINING UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1295).

16210-69-R: Labourers' International Union of North America, Local 183 (Applicant) v. Cedarvale Tree Services Ltd. (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto save and except foremen, those above the rank of foreman, office and sales staff and students employed during the school vacation period." (22 employees in the unit).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 1305).

16754-69-R: United Steelworkers of America (Applicant) v. Berg Mfg (Canada) Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (54 employees in the unit).

(see indexed endorsement page 1327).

16905-69-R: Office and Professional Employees International Union, Local 454 (Applicant) v. The Lakehead Board of Education (Respondent) v. Building Service Employees Union, Local 268 (Intervener).

Unit: "all office and clerical employees of the respondent at Thunder Bay, save and except supervisors, persons above the rank of supervisor, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period, and persons covered by a subsisting collective agreement between the respondent and Building Service Employees' Union, Local 268." (87 employees in the unit).

(having regard to the agreement of the applicant and the respondent).

(see indexed endorsement page 1331).

16908-69-R: Canadian Union of Public Employees (Applicant) v. The Nipissing Board of Education (Respondent) v. Group of Employees (Objectors).

Unit: "all office and clerical employees of the respondent employed in its schools in the geographic jurisdiction of the respondent, save and except persons above the rank of head secretary, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (40 employees in the unit).

(having regard to the written agreement of the parties recorded with the examiner appointed in this matter).

17073-69-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Framat Construction Limited (Respondent) v. London Operators' and Labourers' Union (Intervener) v. Group of Employees (Objectors).

Unit: "all construction labourers in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (18 employees in the unit).

17079-69-R: Canadian Union of Public Employees (Applicant) v. Municipal Corporation of the Town of Picton (Respondent) v. Group of Employees (Objectors).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (12 EMPLOYEES IN THE UNIT).

17127-69-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. THE ELGIN COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1352).

17179-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. RICHARD HAROLD ZUFECT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT BROCKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

17182-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. RUSS PERKINS GULF STATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BROCKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

17202-69-R: THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. MATTAGAMI LAKE MINES LIMITED (NO PERSONAL LIABILITY) (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, WHILE ENGAGED IN CONSTRUCTION PROJECTS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

(FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT CARPENTERS AND CONSTRUCTION LABOURERS WHO MAY SUBSEQUENTLY BE EMPLOYED BY THE RESPONDENT TO DO ORDINARY MAINTENANCE WORK WHEN THE PRESENT PROJECT IS COMPLETED ARE NOT INCLUDED IN THE BARGAINING UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1356).

17204-69-R: United Garment Workers of America (Applicant) v. H.D. Lee of Canada Ltd. (Respondent).

Unit: "all employees of the respondent at Napanee, save and except foremen, foreladies, persons above the ranks of foreman and forelady, and office and sales staff." (35 employees in the unit).

17231-69-R: United Steelworkers of America (Applicant) v. Drum Rings Limited (Respondent).

Unit: "all employees of the respondent at Mississauga, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period." (4 employees in the unit).

17242-69-R: International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO-CLC (Applicant) v. Phoenix Paper Products Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Metropolitan Toronto save and except foremen, foreladies, persons above the rank of foreman and forelady, office staff, sales staff, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week." (68 employees in the unit).

17245-69-R: Retail and Food Employees Local Union 175, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. The Great Atlantic and Pacific Tea Company Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at its retail stores at Oakville, save and except meat department employees, assistant store manager, persons above the rank of assistant store manager, head cashiers, persons regularly employed for not more than 24 hours per week and students employed in off school hours and during the school vacation period." (7 employees in the unit).

(Having regard to the agreement of the parties).

(The Board noted the agreement of the parties that produce department heads are included in the bargaining unit).

17251-69-R: International Association of Machinists and Aerospace Workers (Applicant) v. The Hobart Manufacturing Company Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at its plant at Don Mills, Ontario, save and except foremen and those above the rank of foreman, office and sales staff." (25 employees in the unit).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS EMPLOYED IN THE RESPONDENT'S SERVICE TRAINING PROGRAM ARE NOT INCLUDED IN THE BARGAINING UNIT).

17272-69-R: INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, AFL-CIO-CLC (APPLICANT) v. KIRK CONTAINERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (27 EMPLOYEES IN THE UNIT).

17274-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) v. CHARLES HUFFMAN LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

17275-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. JAMES METAL FINISHING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NIAGARA FALLS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (10 EMPLOYEES IN THE UNIT).

17276-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORE AT COUNTY FAIR PLAZA, THUNDER BAY, ONTARIO, SAVE AND EXCEPT ASSISTANT STORE MANAGER, THOSE ABOVE THE RANK OF ASSISTANT STORE MANAGER AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (80 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE MEAT MANAGER, BAKERY MANAGER, GENERAL MERCHANDISE MANAGER AND PRODUCE MANAGER ARE NOT INCLUDED IN THE BARGAINING UNIT).

17282-69-R: Christian Labour Association of Canada (Applicant) v. Niagara Builders (St. Catharines) Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Lincoln, Welland and Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

17283-69-R: Christian Labour Association of Canada (Applicant) v. Heritage Construction Co. Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Lincoln, Welland and Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

17289-69-R: United Brotherhood of Carpenters & Joiners of America Local Union #249 (Applicant) v. St. Lawrence Glass Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Lennox and Addington, Frontenac and the Townships of Rear of Leeds and Lansdowne, Front of Leeds and Lansdowne, Rear of Yonge and Escott, Front of Yonge and Front of Escott in the County of Leeds, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

17312-69-R: Draftsmen's Association of Ontario, Local 164, American Federation of Technical Engineers, A.F.L.-C.I.O., C.L.C. (Applicant) v. Wilton Contractors Limited (Respondent).

Unit: "all draftsmen and apprentice draftsmen employed by the respondent at Bolton, save and except supervisors and persons above the rank of supervisor." (3 employees in the unit).

17314-69-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. St. Amour and Fils Ltee. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in The Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

17324-69-R: United Brotherhood of Carpenters and Joiners of America Local 1410 (Millwrights) (Applicant) v. Con-Eng Contractors Limited (Respondent).

Unit: "all millwrights and millwrights' apprentices in the employ of the respondent in the United Counties of Stormont, Dundas and Glengarry, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

17329-69-R: International Union of Operating Engineers, Local 796 (Applicant) v. York-Finch General Hospital (Respondent).

Unit: "all stationary engineers and persons primarily engaged as their helpers in the employ of the respondent in Metropolitan Toronto, save and except the Chief Engineer and persons above the rank of Chief Engineer." (5 employees in the unit).

17330-69-R: Christian Labour Association of Canada (Applicant) v. Morris Electric (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the Counties of Peterborough, Victoria and the Provisional County of Haliburton, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

17342-69-R: Draftsmen's Association of Ontario, Local 164, American Federation of Technical Engineers, A.F.L.- C.I.O., C.L.C. (Applicant) v. York Steel Construction Limited (Respondent).

Unit: "all draftsmen employed by the respondent in Metropolitan Toronto, save and except squad leader and those above the rank of squad leaders, and students employed during the school vacation period." (14 employees in the unit).

(having regard to the agreement of the parties).

(for the purpose of clarity the Board noted that the printer and file clerk is not included in the bargaining unit).

17344-69-R: Amalgamated Meat Cutters and Butcher Workmen of North America (Applicant) v. Grace Meat Packers (York) Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week." (30 employees in the unit).

17346-69-R: International Union of Operating Engineers, Local 793 (Applicant) v. The Carter Construction Company Limited (Respondent) v. International Association of Bridge, Structural & Ornamental Iron Workers, Local 759 (Intervener).

Unit: "all employees of the respondent in Township 23 Range 17, Township 23 Range 16, Township 22 Range 16, Township 23 Range 15, Township 22 Range 15 and Township 8H in the District of Sudbury

AND TOWNSHIPS 7H, 7G, 6H, 6G, 5G, 5F, 4F AND 4E IN THE DISTRICT OF ALGOMA ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE CIRCUMSTANCES IN THIS CASE).

17357-69-R: LOCAL UNION 548, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS A.F.L., C.I.O., C.L.C., (APPLICANT) v. ACTON HYDRO ELECTRIC COMMISSION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT AND OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

17358-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. BABCOCK & WILCOX CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

17388-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. BUMEDA STEEL PRODUCTS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

17401-69-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION #249 (APPLICANT) v. FLEMING INSTALLATIONS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

17012-69-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) v. O. & W. ELECTRONICS LIMITED (RESPONDENT) v. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANTS AT 1335 LAWRENCE AVENUE EAST AND 31 RAILSIDE AVENUE AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, CHEMISTS, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND STUDENTS ENGAGED IN CONNECTION WITH A UNIVERSITY CO-OPERATIVE TRAINING PROGRAMME." (190 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		154
NUMBER OF PERSONS WHO CAST BALLOTS	156	
NUMBER OF SPOILED BALLOTS	9	
BALLOTS SEGREGATED AND NOT COUNTED	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	121	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	22	

17040-69-R: BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) v. WESTON BAKERIES LIMITED (RESPONDENT) v. TEAMSTERS' LOCAL 647 (INTERVENER #1) v. THE RETAIL, WHOLESALE, BAKERY & CONFECTIONERY WORKERS' UNION, LOCAL 461, OF THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO-CLC (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS DUPONT STREET PLANT AT TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL #647." (320 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		242
NUMBER OF PERSONS WHO CAST BALLOTS	226	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	206	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #2, THE RETAIL, WHOLESALE, BAKERY & CONFECTIONERY WORKERS' UNION, LOCAL 461, OF THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL CIO CLC	18	

17128-69-R: Textile Workers Union of America, CLC-AFL-CIO (Applicant) v. L. C. Tobias Company Limited (Respondent) v. Canadian Plastic Workers Union 152 N.C.C.L. (Intervener).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except assistant foremen, persons above the rank of assistant foreman, and office staff." (139 employees in the unit).

Number of names of persons on revised voters' list		109
Number of persons who cast ballots	101	
Number of spoiled ballots	4	
Number of ballots marked in favour of applicant	85	
Number of ballots marked in favour of intervener	12	

17144-69-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Croven Limited (Respondent).

Unit: "all employees of the respondent at Whitby, save and except foremen, persons above the rank of foreman, office and sales staff." (372 employees in the unit).

Number of names of persons on revised voters' list		341
Number of persons who cast ballots	341	
Number of spoiled ballots	3	
Number of ballots marked in favour of applicant	219	
Number of ballots marked in favour of Croven Employees Association	119	

Certified Subsequent to Post-Hearing Vote

16698-69-R: Retail Clerks International Association (Applicant) v. P. Lipsett Drugs carrying on business under the trade name of Shoppers Drug Mart (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except floor manager, persons above the rank of floor manager, graduate and undergraduate pharmacists, office staff and students employed during the school vacation period." (19 employees in the unit).

Number of names of persons on revised voters' list		16
Number of persons who cast ballots	16	
Number of ballots marked in favour of applicant	14	
Number of ballots marked against applicant	2	

16735-69-R: Retail and Food Employees Local Union 175, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. The Great Atlantic and Pacific Tea Company, Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in its retail stores at London, save and except Assistant Store Managers, Head Cashiers, persons above the rank of Assistant Store Manager and Head Cashier, Meat Department employees, persons regularly employed for not more than 24 hours per week and, having regard to the agreement of the parties, students employed in off-school hours and during the school vacation period." (35 employees in the unit).

Number of names of persons on revised voters' list		41
Number of persons who cast ballots	41	
Number of ballots marked in favour of applicant	23	
Number of ballots marked against applicant	18	

16763-69-R: United Steelworkers of America (Applicant) v. Hollinger Mines Limited (Respondent).

Unit: "all employees of Hollinger Mines Ltd. at their Ross Mine in the Township of Hislop, save and except foremen, shift bosses, persons above the rank of foreman and shift boss, office and clerical staff, employees in thelaboratory and in the engineering, geological and metallurgical department, security guards and students employed during the school vacation period." (89 employees in the unit).

Number of names of persons on revised voters' list		76
Number of persons who cast ballots	73	
Ballots segregated and not counted	3	
Number of ballots marked in favour of applicant	55	
Number of ballots marked against applicant	15	

16976-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. CARMAN CONSTRUCTION LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT: (A) ITS REPAIR SHOP AND YARD IN WATERS TOWNSHIP IN THE DISTRICT OF SUDBURY; (B) THE GRAVEL PIT OPERATIONS IN WATERS TOWNSHIP IN THE DISTRICT OF SUDBURY; (C) THE CREAN HILL OPEN PIT MINE IN DENISON TOWNSHIP IN THE DISTRICT OF SUDBURY; (D) ITS QUARTZ QUARRY IN DIEPPE TOWNSHIP IN THE DISTRICT OF SUDBURY AND (E) COPPER CLIFF AS FUEL TRUCK DRIVERS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."

UNIT #2: "ALL CONSTRUCTION LABOURERS AND TRUCK DRIVERS AT COPPER CLIFF AND ALL EMPLOYEES OF THE RESPONDENT AT COPPER CLIFF, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMAN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		23
NUMBER OF PERSONS WHO CAST BALLOTS	23	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	21	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	2	

UNIT #3: "ALL CONSTRUCTION LABOURERS AND TRUCK DRIVERS IN WATERS TOWNSHIP IN THE DISTRICT OF SUDBURY AND ALL EMPLOYEES OF THE RESPONDENT IN WATERS TOWNSHIP IN THE DISTRICT OF SUDBURY, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

UNIT #4: "ALL TRUCK DRIVERS AND MECHANICS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF THESSALON IN THE DISTRICT OF ALGOMA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (THE ABOVE 4 UNITS COVER A TOTAL OF 68 EMPLOYEES).

(HAVING REGARD TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, THE APPLICATION, IN SO FAR AS IT RELATES TO THE SINGLE EMPLOYEE WHO WORKED AT PARRY SOUND ON THE DATE OF THE MAKING OF THE APPLICATION, IS DISMISSED).

17007-69-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 12-L (APPLICANT) v. REDI-SET BUSINESS FORMS LIMITED (RESPONDENT).

UNIT: "ALL OFFSET PRESSMEN, THEIR APPRENTICES AND HELPERS AND ALL OFFSET CAMERA OPERATORS, STRIPPERS AND PLATEMAKERS AND THEIR APPRENTICES, IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (21 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		20
NUMBER OF PERSONS WHO CAST BALLOTS	20	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	12	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	8	

17052-69-R: TEAMSTERS' LOCAL UNION NO. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. YORK BLOCK AND BUILDING SUPPLY, A DIVISION OF S.P. & M. MATERIALS LIMITED (RESPONDENT) v. UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, LOCAL UNION NO. 377, AFL-CIO., CLC (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN AND OUT OF 9385 YONGE STREET, RICHVALE (RICHMOND HILL), SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (25 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		23
NUMBER OF PERSONS WHO CAST BALLOTS	23	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	23	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING FEBRUARY

16480-69-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. WENTWORTH LODGE (RESPONDENT). (52 EMPLOYEES).

16984-69-R: TEAMSTERS' LOCAL UNION NO. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. NORTHERN READY-MIX LIMITED (RESPONDENT).

17021-69-R: TEAMSTERS' LOCAL UNION NO. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT)v. SANCO CONSTRUCTION LIMITED (RESPONDENT). (17 EMPLOYEES).

17039-69-R: Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. L & W Distributers Ltd. carrying on business as N & D. Supermarket (Respondent). (21 employees).

(See indexed endorsement page 1343).

17042-69-R: United Steelworkers of America (Applicant) v. W. C. Wood Company Limited (Respondent) v. Group of Employees (Objectors). (273 employees).

17084-69-R: International Union of Operating Engineers, Local 796 (Applicant) v. Fred Hamilton Maintenance Limited (Respondent). (5 employees).

17092-69-R: Canadian Concrete Forming Union No. 1 (Applicant) v. Triple F Forming Limited (Respondent) v. Council of Concrete Forming Trade Unions (Intervener). (42 employees).

(See indexed endorsement page 1344).

17104-69-R: Canadian Union of Public Employees (Applicant) v. Northumberland and Durham County Board of Education (Respondent). (53 employees).

17155-69-R: Brampton Typographical Union, Local 987 (Applicant) v. The Daily Times and Conservator, Brampton (Respondent). (5 employees).

17171-69-R: Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, CLC (Applicant) v. The Attorney General of Canada on behalf of Her Majesty The Queen in Right of Canada (Respondent). (7 employees).

(See indexed endorsement page 1355).

17186-69-R: United Brotherhood of Carpenters & Joiners of America, Local Union #249 (Applicant) v. J. M. Construction Limited (Respondent). (2 employees).

17212-69-R: International Union of Operating Engineers, Local 772 (Applicant) v. Clinton Public Hospital (Respondent). (4 employees).

17227-69-R: Draftsmen's Association of Ontario, Local 164, American Federation of Technical Engineers, A.F.L.-C.I.O., C.L.C. (Applicant) v. John T. Hepburn, Limited (Respondent). (7 employees).

17228-69-R: Draftsmen's Association of Ontario, Local 164, American Federation of Technical Engineers, A.F.L.-C.I.O., C.L.C. (Applicant) v. Dominion Bridge Company Limited (Respondent). (16 employees).

(SEE INDEXED ENDORSEMENT PAGE 1358).

17229-69-M: Draftsmen's Association of Ontario, Local 164, American Federation of Technical Engineers, A.F.L.-C.I.O., C.L.C. (Applicant) v. A. B. C. Steel Buildings Ltd. (Respondent). (no employees).

17230-69-R: Draftsmen's Association of Ontario, Local 164, American Federation of Technical Engineers, A.F.L.-C.I.O., C.L.C. (Applicant) v. Canron Ltd., (Eastern Structural Division) (Respondent). (25 employees).

17244-69-R: Bakery & Confectionery Workers' International Union of America, Local 264 (Applicant) v. Primo Importing & Distributing Company Limited (Respondent) v. Group of Employees (Objectors). (25 employees).

17286-69-R: Painters, Decorators and Paperhangers of America, Local Union 1891 (Applicant) v. Architectural Acoustics & Dry Wall (Respondent). (2 employees).

17303-69-R: Canadian Union of Construction Workers (Applicant) v. Etobicoke Terrazzo & Tile Co. (Respondent). (2 employees).

17308-69-R: Canadian Union of Construction Workers (Applicant) v. Trend Flooring & Supplies Limited (Respondent). (16 employees).

17347-69-R: United Garment Workers of America Local #253 (Applicant) v. Rajac Leather and Sportswear Limited (Respondent). (26 employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

17134-69-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Northern Electric Company Limited (Respondent) v. Northern Electric Employee Association (Intervener).

Voting Constituency: "all hourly rated non-supervisory employees of the respondent at its Belleville Works save and except the plant security staff." (817 employees).

Number of names of persons on revised voters' list		776
Number of persons who cast ballots	771	
Number of ballots marked in favour of applicant	324	
Number of ballots marked in favour of intervener	447	

17147-69-R: Bakery & Confectionery Workers International Union of America, Local 264 (Applicant) v. Dempster's Bread, Division of Corporate Foods Limited (Respondent) v. The Retail, Wholesale Bakery and Confectionery Workers Union, on behalf of Local 461 of the Retail, Wholesale and Department Store, A.F. of L. - C.I.O. - C.L.C. (Intervener).

Voting Constituency: "all employees of the respondent at 2 Fraser Avenue, Toronto, Ontario, save and except foremen, foreladies, persons above the rank of foreman and forelady, office staff, and persons regularly employed for not more than 24 hours per week." (172 employees).

Number of names of persons on revised voters' list		166
Number of persons who cast ballots	158	

(ballot box sealed)

17148-69-R: Boot and Shoe Worker's Union Affiliated with the Canadian Labour Congress and A.F.L. - C.I.O. (Applicant) v. Junior Footwear Limited (Respondent).

Voting Constituency: "all employees of the respondent at its plant at Markdale and its fitting room at Owen Sound, save and except foremen, foreladies, persons above the ranks of foreman and forelady, office and sales staff, and students employed during the school vacation period." (140 employees).

Number of names of persons on revised voters' list		127
Number of persons who cast ballots	127	
Number of spoiled ballots	2	
Ballots segregated and not counted	2	
Number of ballots marked in favour of applicant	41	
Number of ballots marked against applicant	82	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

16014-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. NORFOLK COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT NORFOLK COUNTY REGULARLY EMPLOYED FOR NOT MORE THAT 24 HOURS PER WEEK ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF SUPERINTENDENT AND OFFICE STAFF." (34 EMPLOYEES IN THE UNIT).

(APPLICANT CERTIFIED).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT NORFOLK COUNTY ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF SUPERINTENDENT AND OFFICE STAFF." (42 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		31
NUMBER OF PERSONS WHO CAST BALLOTS	31	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	15	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	16	

(APPLICANT DISMISSED).

16771-69-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION - A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. BURLINGTON HOTEL COMPANY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL WAITERS, TAPMEN AND BARTENDERS AT THE SHERWOOD INN, BRANT STREET AT BURLINGTON, SAVE AND EXCEPT OWNERS AND MANAGERS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		6
NUMBER OF PERSONS WHO CAST BALLOTS	6	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6	

16895-69-R: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) v. B. F. GOODRICH CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS B. F. GOODRICH CHEMICAL CANADA DIVISION IN THOROLD TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (79 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		78
NUMBER OF PERSONS WHO CAST BALLOTS	78	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	19	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	59	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING FEBRUARY

17210-69-R: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES LOCAL UNION 352 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. CORPORATION OF PENETANGUISHENE (RESPONDENT). (8 EMPLOYEES).

17235-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE TOWN OF NIAGARA-ON-THE LAKE (RESPONDENT). (21 EMPLOYEES).

17325-69-R: CARPENTERS UNION 249 KINGSTON ONT. (APPLICANT) v. CANADIAN JOHNS-MANVILLE CO. LTD. (RESPONDENT). (3 EMPLOYEES).

17359-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT). (40 EMPLOYEES).

17360-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. K MART FOODS (OPERATED BY M. LOEB LIMITED) (RESPONDENT). (42 EMPLOYEES).

17367-69-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 131 (APPLICANT) v. CANADIAN LABORATORY SUPPLIES LIMITED (RESPONDENT). (173 EMPLOYEES).

17369-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) v. PRO-CON INVESTMENT LTD. (RESPONDENT).

17379-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) v. MCGUINNESS DISTILLERS LIMITED (RESPONDENT) (4 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING FEBRUARY

16107-69-R: The Labourers International Union of North America Local 506 (Applicant) v. The Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 117 (Respondent) v. Kingsway Plastering Co. Ltd. (Intervener). (54 employees). (GRANTED).

(Re: Kingsway Plastering Co. Ltd.)

(SEE INDEXED ENDORSEMENT PAGE 1360).

17124-69-R: Gordon McClennan (Applicant) v. International Union of Operating Engineers, Local 796 (Respondent) v. Brunswick of Canada Limited (Intervener). (GRANTED).

(Re: Brunswick of Canada Limited).

Unit: "all stationary engineers and those employees primarily engaged as their helpers employed at Brunswick of Canada's current plant at 1156 Dundas Highway East, Cooksville." (4 employees in the unit).

Number of names of persons on voters' list		4
Number of persons who cast ballots	4	
Number of ballots marked in favour of respondent	0	
Number of ballots marked against respondent	4	

17150-69-R: Macdonalds Consolidated Limited (Applicant) v. Retail Clerks International Association (Respondent). (GRANTED).

(Re: Macdonalds Consolidated Limited).

Unit: "all office employees of Macdonalds Consolidated Limited in the City of Thunder Bay, save and except office manager, persons above the rank of office manager, buyers (grocery and produce), secretary to the manager and payroll clerk and all part-time employees." (4 employees in the unit).

Number of names of persons on voters' list		3
Number of persons who cast ballots	3	
Number of ballots marked in favour of respondent	0	
Number of ballots marked against respondent	3	

17194-69-R: Andre Construction Company, 474 West Street North, P.O. Box 566, Orillia, Ontario (Applicant) v. The Central Ontario District Council United Brotherhood of Carpenters and Joiners of America (Respondent). (no employees). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1375).

17311-69-R: The Canadian Union of Construction Workers (Applicant) v. The Marble Tile and Terrazzo Union, Local 31, and The Toronto Building and Construction Trades Council (Respondents) v. Gem-Campbell Terrazzo Tile (Intervener) v. New Way Terrazzo Limited (Intervener) v. Mercury Tile-Terrazzo Limited (Intervener) v. Perfect Tile Company (Intervener) v. Time Terrazzo Tile Marble and Mosaic Company Limited (Intervener) v. Paolini Tile and Marble Co. Ltd. (Intervener) v. Derby Terrazzo & Tile Company Limited (Intervener) v. Bloor Terrazzo Tile & Mosaic Ltd. (Intervener) v. Lancia Tile Co. (Intervener) v. Granita Tile & Construction Ltd. (Intervener) v. Continental Terrazzo & Marble Company Limited (Intervener) v. Vatri Marble Tile and Terrazzo Co. (Intervener). (WITHDRAWN). (50 employees).

17318-69-R: Stella Pittman (Applicant) v. International Union of Electrical, Radio & Machine Workers' AFL.CIO.CLC. (Respondent). (7 employees). (GRANTED).

(Re: Generator & Electric Company, Limited).

17319-69-R: John A. Stagg and others (Applicant) v. General Truck Driver Union Local 938 95 Trinity Street Toronto 2, Ontario (Respondent). (42 employees). (GRANTED).

(Re: Canada & Dominion Sugar Co. Ltd., Toronto refinery).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING FEBRUARY

17050-69-R: Canadian Union of Public Employees (Applicant) v. The Board of Education for the Borough of North York (Respondent) v. North York Board of Education Independent Caretakers Union (Predecessor Trade Union) v. Group of Employees (Objectors). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1376).

17142-69-R: Oil, Chemical and Atomic Workers International Union (Applicant) v. Gulf Oil Canada Limited (Respondent) v. Gulf Oil Canada Limited, Clarkson Bargaining Association (Predecessor Trade Union) v. Group of Employees (Objectors). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1380).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING FEBRUARY

17252-69-U: Fraser-Brace Engineering Company Limited Falconbridge, Ontario (Applicant) v. Ejnar AA et al (Respondents). (WITHDRAWN).

17253-69-U: Fraser-Brace Engineering Company Limited Falconbridge, Ontario (Applicant) v. Paul Emile Albert et al (Respondent). (WITHDRAWN).

17254-69-U: Fraser-Brace Engineering Co. Ltd. Falconbridge, Ontario (Applicant) v. Maksim Andric et al (Respondents). (WITHDRAWN).

17255-69-U: Fraser-Brace Engineering Co. Ltd., Falconbridge, Ontario (Applicant) v. Yvon Brassard et al (Respondents). (WITHDRAWN).

17256-69-U: Fraser-Brace Engineering Co. Ltd. Falconbridge, Ontario (Applicant) v. Garth Anderson et al (Respondents). (WITHDRAWN).

17257-69-U: Fraser-Brace Engineering Company Limited Falconbridge, Ontario (Applicant) v. Stanley Arseneau et al (Respondents). (WITHDRAWN).

17258-69-U: Fraser-Brace Engineering Co. Ltd., Falconbridge, Ont. (Applicant) v. Gordon Bechard et al (Respondents). (WITHDRAWN).

17259-69-U: Fraser-Brace Engineering Co. Ltd., Falconbridge, Ont. (Applicant) v. Herman Auger et al (Respondents). (WITHDRAWN).

17260-69-U: Fraser-Brace Engineering Co. Ltd., Falconbridge, Ont. (Applicant) v. Adelard Boivin et al (Respondents). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING FEBRUARY

16689-69-U: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. The Governor and Company of Adventurers of England trading into Hudson's Bay, operating as Hudson's Bay Company (Respondent). (WITHDRAWN).

17213-69-U: Retail Clerks International Association (Applicant) v. Mr. M. Koffler & Shoppers Drug Mart (Respondents). (DISMISSED).

17214-69-U: Retail Clerks International Association (Applicant) v. M. Green Drugs carrying on business under the trade name of Shoppers Drug Mart (Respondent). (GRANTED).

17215-69-U: Retail Clerks International Association (Applicant) v. N. Weingarten, Esq., carrying on business under the trade name of Shoppers Drug Mart (Respondent). (GRANTED).

17216-69-U: Retail Clerks International Association (Applicant) v. Thrifty Drugs Limited carrying on business under the trade name of Shoppers Drug Mart (Respondent). (GRANTED).

17217-69-U: Retail Clerks International Association (Applicant) v. Plaza Drug Stores Ltd. (Toronto) carrying on business under the trade name of Shoppers Drug Mart (Respondent). (GRANTED).

17218-69-U: Retail Clerks International Association (Applicant) v. Oscar Goodman Drugs carrying on business underthe trade name of Shoppers Drug Mart (Respondent). (GRANTED).

17219-69-U: Retail Clerks International Association (Applicant) v. M. Percy Spencer Drug carrying on business under the trade name of Shoppers Drug Mart (Respondent). (GRANTED).

17261-69-U: Fraser-Brace Engineering Co. Ltd., Falconbridge, Ontario (Applicant) v. Paul Emile Albert et al (Respondents). (WITHDRAWN).

17262-69-U: Fraser-Brace Engineering Co. Ltd., Falconbridge, Ontario (Applicant) v. Ejnar AA et al (Respondents). (WITHDRAWN).

17263-69-U: Fraser-Brace Engineering Co. Ltd., Falconbridge, Ontario (Applicant) v. Maksim Andric et al (Respondents). (WITHDRAWN).

17264-69-U: Fraser-Brace Engineering Company Limited, Falconbridge, Ont. (Applicant) v. Yvon Brassard et al (Respondents). (WITHDRAWN).

17265-69-U: Fraser-Brace Engineering Company Limited Falconbridge, Ontario (Applicant) v. Stanley Arseneau et al (Respondents). (WITHDRAWN).

17266-69-U: Fraser-Brace Engineering Co. Ltd., Falconbridge, Ontario (Applicant) v. Herman Auger et al (Respondents). (WITHDRAWN).

17267-69-U: Fraser-Brace Engineering Co. Ltd., Falconbridge, Ontario (Applicant) v. Adelard Boivin et al (Respondents). (WITHDRAWN).

17268-69-U: Fraser-Brace Engineering Co. Ltd., Falconbridge, Ontario (Applicant) v. Gordon Bechard et al (Respondents). (WITHDRAWN).

17269-69-U: Fraser-Brace Engineering Co. Ltd., Falconbridge, Ontario (Applicant) v. Garth Anderson et al (Respondents). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF

DURING FEBRUARY

16732-69-U: Hotel & Restaurant Employees and Bartenders' International Union, Restaurant, Cafeteria & Tavern Employees Union, Local 254 (Complainant) v. The Civil Service Association of Ontario (INC) (Respondent). (WITHDRAWN).

16900-69-U: The Canadian Union of Public Employees (Complainant) v. Renfrew County Roman Catholic Separate School Board (Respondent). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1381).

16990-69-U: United Electrical, Radio and Machine Workers of America (UE) (Complainant) v. O. & W. Electronics Limited (Respondent). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1384).

17005-69-U: Retail Clerks International Association (Complainant) v. N. Weingarten, Esq. carrying on business under the correct name of Shoppers Drug Mart (Respondent). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1389).

17149-69-U: Canadian Union of Public Employees (Complainant) v. York Sanitation Company Limited (Respondent). (WITHDRAWN).

17151-69-U: United Papermakers and Paperworkers, A.F.L. - C.I.O. - C.L.C. (Complainant) v. Atlantic Packaging Company (Respondent). (WITHDRAWN).

17162-69-U: International Brotherhood of Pulp, Sulphite and Paper Mill Workers (Complainant) v. Phoenix Paper Products Ltd. (Respondent). (WITHDRAWN).

17234-69-U: Thomas Feeney and Peter Rennie (Complainant) v. The Metropolitan Separate School Board (Respondent). (WITHDRAWN).

17237-69-U: Local Union Number 390, of the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO-CLC (Complainant) v. Pure Spring (Canada) Limited (Respondent). (WITHDRAWN).

17331-69-U: United Steelworkers of America (Complainant) v. V.C.A. Manufacturing of Canada Limited (Respondent). (WITHDRAWN).

APPLICATION UNDER SECTION 47A DISPOSED OF DURING FEBRUARY

16997-69-M: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. RONER CONSTRUCTION LIMITED; MIRON-WIGGERS CONSTRUCTION LIMITED; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1071; LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 597 (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 1392).

JURISDICTIONAL DISPUTES

17009(A)-69-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (COMPLAINANT) V. ROCKWIN CONSTRUCTION LIMITED AND THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCALS 27, 3233, 681, 3227, 666 AND 1963 AND THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 1396).

17293(A)-69-JD: DINEEN CONSTRUCTION LIMITED (COMPLAINANT) V. LOCAL 183, ROCK AND TUNNEL MINING DIVISION OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA AND LOCAL 493, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (RESPONDENTS). (WITHDRAWN).

17338(A)-69-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (COMPLAINANT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721, BEER PRECAST CONCRETE LIMITED AND E.G.M. CAPE & COMPANY LTD. (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 1400).

17362(A)-69-JD: CASEY MECHANICAL CO. LIMITED (COMPLAINANT) V. INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL 736, AND UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 38 (RESPONDENTS). (WITHDRAWN).

17362(B)-69-JD: CASEY MECHANICAL CO. LIMITED (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 38 (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING FEBRUARY

16020-69-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES - CLC, ONTARIO-HYDRO EMPLOYEES UNION, LOCAL 1000 (APPLICANT) v. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 1402).

16483-69-M: UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA AND ITS LOCAL 246 (AFL-CIO-CLC) (APPLICANT) v. DOMINION GLASS COMPANY LIMITED WALLACEBURG, ONTARIO (RESPONDENT).

17133-69-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE HASTINGS COUNTY BOARD OF EDUCATION (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 1404).

17250-69-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 855 (APPLICANT) v. THE CORPORATION OF THE TOWN OF LINDSAY (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 1405).

REFERENCE TO BOARD PURSUANT TO SECTION 79A

17158-69-M: LOCAL UNION 1687, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (TRADE UNION) AND BUD BURKE PLUMBING, HEATING & ELECTRICAL SERVICE (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 1406).

INDEXED ENDORSEMENTS - CERTIFICATION

15917-68-R: NURSES' ASSOCIATION AJAX & PICKERING GENERAL HOSPITAL (APPLICANT) v. AJAX AND PICKERING GENERAL HOSPITAL (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

DECISION OF O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER
P. J. O'KEEFFE: FEBRUARY 19, 1970.

. . .

2. THE BOARD FURTHER FINDS THAT ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT, SAVE AND EXCEPT ASSISTANT DIRECTOR OF NURSING AND THOSE PERSONS ABOVE THE RANK OF ASSISTANT DIRECTOR OF NURSING, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. FOR THE PURPOSE OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT REGISTERED AND GRADUATE NURSES EMPLOYED IN THE LABORATORY AND OFFICE ARE NOT INCLUDED IN THE BARGAINING UNIT AND ALSO THAT MRS. M. LUMB, CLASSIFIED AS A RELIEF SUPERVISOR, IS NOT INCLUDED IN THE BARGAINING UNIT.

4. HAVING REGARD TO THE REPORT OF THE EXAMINER DATED 25TH JUNE 1969, THE BOARD FINDS THAT ASSISTANT HEAD NURSES ARE INCLUDED IN THE BARGAINING UNIT.

5. IN THIS CASE THE HEAD NURSES WERE CLAIMED AS PERSONS EXERCISING MANAGERIAL FUNCTIONS WITHIN SECTION 13(B) OF THE LABOUR RELATIONS ACT. IT WOULD FOLLOW THAT IF THEY WERE MANAGERIAL THEY THEN WOULD BE EXCLUDED FROM THE BARGAINING UNIT.

6. THE POSITION OF THE HEAD NURSES RAISES COMPLEX ISSUES. THE INCREASING EXPANSION OF COLLECTIVE BARGAINING FROM INDUSTRIAL AREAS INTO NEW AREAS SUCH AS THE PUBLIC SERVICE AND THE DEVELOPMENT OF MODERN ORGANIZATIONAL SCHEMES AND DECISION-MAKING PROCESSES HAS MADE THE ASSESSMENT AS TO WHETHER A PERSON EXERCISES MANAGERIAL FUNCTIONS MORE DIFFICULT. FOR EXAMPLE, PERSONS CARRYING CERTAIN TITLES IN AN INDUSTRIAL SETTING WHO COULD BE TAKEN AXIOMATICALLY TO EXERCISE MANAGERIAL FUNCTIONS HAVE NOW HAD THEIR DUTIES AND RESPONSIBILITIES DISPERSED, SO THAT THE INDICIA OF MANAGEMENT WHICH FORMERLY ATTACHED TO THEM NO LONGER REMAINS. INDICIA SUCH AS HIRING AND FIRING HAVE BEEN ASSIGNED TO PERSONNEL DEPARTMENTS, DETERMINING QUANTITY AND SPEED OF WORK HAS BEEN ASSIGNED TO TIME STUDY PERSONNEL AND COMPUTERS, AND EVALUATING QUALITY OF WORK HAS BECOME THE RESPONSIBILITY OF QUALITY CONTROL PERSONNEL. THE DECISION-MAKING PROCESS MAY BE INDIVIDUAL ON-THE-JOB DECISION-MAKING, OR IT MAY HAVE DEVELOPED INTO GROUP DECISION-MAKING BY A VARIETY OF PERSONS. IN ADDITION, DECISION-MAKING MAY OCCUR OUTSIDE THE IMMEDIATE PLANT, SUCH AS DECISIONS MADE BY INDEPENDENT ADVISORS AND CONSULTANTS OR DECISIONS MADE AT A HEAD OFFICE. ACCORDINGLY, THOSE PERSONS WHOSE TITLE ALMOST AUTOMATICALLY QUALIFIED THEM AS BEING MANAGERIAL, MUST BE EVALUATED IN THE LIGHT OF CONTEMPORARY REALITIES.

7. THE INSTANT CASE RAISES THE FURTHER PROBLEM OF THE EXERCISE OF MANAGERIAL AUTHORITY IN PROFESSIONAL OR SEMI-PROFESSIONAL SITUATIONS.

IT IS PATENT THAT IF THIS HEAD NURSE EXERCISES MANAGERIAL AUTHORITY OVER THE OTHER NURSES THAT SHE WOULD NOT EXERCISE THAT AUTHORITY IN A MANNER SIMILAR TO THE TRADITIONAL FOREMAN. THE MANNER OF AUTHORITY IN THIS KIND OF SITUATION IS MORE SUBTLE, IF AT ALL. IT MUST BE REMEMBERED THAT THE EMPLOYEES IN THE BARGAINING UNIT ARE RESPONSIBLE AND HIGHLY TRAINED PERSONNEL; THEY MAY ON THE ONE HAND REQUIRE VERY LITTLE DIRECTION OR AUTHORITY IN PERFORMING THEIR TASKS WHILE ON THE OTHER HAND, DIRECTION AND AUTHORITY MAY ARISE FROM SUCH SUBTLE MANNERISMS AS VOICE INFLECTIONS; YET AGAIN DIRECTION MAY ARISE OUT OF GROUP DISCUSSION OR PARTICIPATION. THE TASK CONFRONTING THE BOARD IS TO EVALUATE THE EVIDENCE IN A MANNER THAT CAPTURES AUTHORITY AND IT IS A MOST DIFFICULT TASK INDEED.

8. IN ATTEMPTING TO CAPTURE THE SITUATION IT MUST BE REMEMBERED THAT IN MANY SITUATIONS THE EVIDENCE REVEALS THREE POINTS OF VIEW. FIRST THERE IS THE POINT OF VIEW OF MANAGEMENT. MANAGEMENT MAY REGARD CERTAIN PERSONS AS EXERCISING MANAGERIAL AUTHORITY, WHICH THEY IN FACT DO. OTHERS MAY BE REGARDED AS EXERCISING MANAGERIAL AUTHORITY, BUT IN TRUTH MANAGEMENT MAY HAVE DISPERSED THAT AUTHORITY INTO DIFFERENT AREAS OF ITS OPERATIONS, E.G. HIRING MAY BE DONE BY A PERSONNEL OFFICE. THOSE PERSONS THEREFORE MIGHT NOT BE REGARDED BY THE BOARD AS EXERCISING MANAGERIAL AUTHORITY. SOME WHO ARE REGARDED WITHOUT MANAGERIAL AUTHORITY MAY WITH TIME HAVE ACQUIRED CERTAIN MANAGERIAL QUALITIES. FOR EXAMPLE, LONG TERM EMPLOYEES WHO ARE NOT CONSIDERED A PART OF THE MANAGEMENT GROUP MAY BE ENTRUSTED WITH OR MAY HAVE ASSUMED LIMITED AUTHORITY TO DIRECT AND CONTROL MORE JUNIOR EMPLOYEES. THESE PERSONS ALTHOUGH NOT REGARDED AS MANAGERIAL MAY FALL WITHIN THE CRITERIA FIXED BY THIS BOARD FOR DETERMINING MANAGERIAL FUNCTIONS.

9. SECONDLY, THERE IS THE INDIVIDUAL EMPLOYEE CONCERNED AND THE QUESTION OF SELF IMAGE. THE BOARD'S EXPERIENCE INDICATES THAT CERTAIN PERSONS MAY MAXIMIZE OR MINIMIZE THEIR ROLE IN THE PARTICULAR BUSINESS OR OPERATION. THE BOARD IS CONSTANTLY FACED BOTH WITH EMPLOYEES WHO HAVE AN INFLATED VIEW OF THEIR VALUE AND AUTHORITY, AND WITH EMPLOYEES WHO ARE SELF EFFACING IN DESCRIBING THEIR POSITION IN A PARTICULAR MANAGEMENT SCHEME.

10. THIRDLY, THERE IS THE VIEWPOINT OF THE EMPLOYEES THEMSELVES. AS OFTEN HAPPENS, EMPLOYEES MAY CONSIDER CERTAIN PERSONS AS MANAGERIAL WHO ARE NOT. OFTEN WORKERS ARE REGARDED BY OTHER EMPLOYEES AS MANAGERIAL WHEN IT IS NOT MANAGERIAL AUTHORITY BUT LEADERSHIP, JOB KNOWLEDGE AND UNDERSTANDING THAT THESE PEOPLE EXHIBIT. AGAIN, MANAGERIAL AUTHORITY MAY BE EXERCISED IN SUCH A LOW KEY AND SUBTLE FASHION THAT THE "BOSS" CONCEPT IS REMOVED FROM THE SITUATION AND EMPLOYEES MAY NOT RECOGNIZE THE PERSON AS BEING MANAGERIAL.

11. In difficult situations, the Board may require cogent evidence from all three vantage points in order a proper determination as to whether persons are in fact managerial. In each situation the Board may also be governed by the nature of the industry, the particular business, and the employer's organizational scheme. However, it must be remembered that The Labour Relations Act must be interpreted as an Act in the public interest which is to provide collective bargaining for employees, and it is therefore incumbent on persons who seek to exclude employees from the scheme of the Act to prove that such persons exercise managerial functions. See Bakery & Confectionery Workers I.U.A. v. Salmi 56 D.L.R. (2d) 193.

12. A recent example of the modern problems in determining managerial personnel may be found in The Canadian Union of Public Employees-C.L.C., Ontario Hydro Employees Union Local 1000, The Hydro-Electric Power Commission of Ontario, 1969 August OLRB Mthly. Rep. 669. In that case this Board stated at p. 674:-

> "8. With the rapid advance of technology and the use of more sophisticated management tools, an ever increasing number of persons are becoming actively involved, in varying degrees, in all aspects of improving public relations, efficiency, productivity and in controlling the cost of production. As more persons become involved in these matters, it becomes increasingly difficult to distinguish between persons who exercise managerial functions within the meaning of section 1(3)(b) of the Act and employees. The distinction between managerial persons and employees cannot be made on the basis of titles or classifications alone. The distinction can only be based on the evidence of the duties and responsibilities exercised by such persons in the particular case. Such decisions necessarily involve an empirical determination of whether the person who may perform functions which relate to or bear upon the improvement of public relations efficiency, productivity or cost, is in fact controlling or determining the process or is merely implementing a process which has been predetermined by some person in management. It cannot be denied that these matters are properly the concern of management. However, if the person is merely implementing a decision made by another and has little latitude to use any independent discretion except in predetermined circumscribed areas,

SUCH A PERSON CANNOT BE SAID TO BE EXERCISING MANAGERIAL FUNCTIONS. IF, ON THE OTHER HAND, A PERSON HAS THE INDEPENDENT DISCRETION TO FORMULATE POLICY AND METHODS OR SETS THE NECESSARY GUIDELINES FOR OTHERS TO FOLLOW, SUCH FUNCTIONS MAY PROPERLY BE DESCRIBED AS MANAGERIAL FUNCTIONS. THESE LATTER FUNCTIONS ARE READILY DISTINGUISHABLE FROM THE FUNCTIONS PERFORMED BY PERSONS WHO MERELY GATHER OR COLLATE INFORMATION WHICH WILL BE ACTED UPON BY A MEMBER OF MANAGEMENT.

9. IN ADDITION, THE FACT THAT MANAGERIAL PERSONS RELY ON THE EXPERTISE OF SENIOR EMPLOYEES OR EMPLOYEES WHO POSSESS HIGHLY TECHNICAL KNOWLEDGE AND SKILLS, AND ACT UPON THE ADVICE OF SUCH PERSONS, DOES NOT CHANGE THE NATURE OF THE FUNCTIONS EXERCISED BY THE EMPLOYEES. THE FACT THAT AN EXPERT EMPLOYEE MAY RECOMMEND A COURSE OF ACTION WHICH A MEMBER OF MANAGEMENT MAY DECIDE TO FOLLOW DOES NOT OF ITSELF MAKE THE EMPLOYEES' RECOMMENDATION A MANAGERIAL FUNCTION. ALTHOUGH A RECOMMENDATION MAY BE THE BASIS OF THE DECISION TAKEN, HOWEVER, IT IS THE DECISION TO IMPLEMENT THE RECOMMENDATION WHICH CAN CORRECTLY BE DESCRIBED AS THE MANAGERIAL FUNCTION. IF A PERSON ACTIVELY PARTICIPATES IN THE MAKING OF SUCH DECISIONS ON A REGULAR BASIS HE MAY BE SAID TO EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT."

WHILE DEALING WITH THE PARTICULAR FACTS OF THAT CASE THE BOARD MADE A NUMBER OF SIGNIFICANT DISTINCTIONS. THUS PERSONS WHO CONTROLLED OR DETERMINED THE PROCESS ARE DISTINGUISHED FROM PERSONS WHO MERELY IMPLEMENTED A PREDETERMINED PROCESS; PERSONS WHO EXERCISE INDEPENDENT DISCRETION TO FORMULATE POLICY AND METHODS OR SET NECESSARY GUIDELINES FOR OTHERS TO FOLLOW ARE DISTINGUISHED FROM PERSONS WHO USE INDEPENDENT DISCRETION IN PREDETERMINED CIRCUMSCRIBED AREAS; PERSONS WHO DECIDE TO IMPLEMENT RECOMMENDATIONS ARE DISTINGUISHED FROM PERSONS WHO RECOMMEND A COURSE OF ACTION. SEE ALSO REED: WHITE COLLAR BARGAINING UNITS, INDUSTRIAL RELATIONS CENTRE, QUEENS UNIVERSITY RESEARCH SERIES NO. 8 P 33 TO 35.

13. WHILE WE RECOGNIZE THAT IN MANY INSTANCES THIS BOARD HAS MADE A FINDING THAT HEAD NURSES ARE NOT INCLUDED IN THE BARGAINING UNIT, WE THINK THAT THE BOARD'S POSITION HAS BEEN CORRECTLY STATED IN NURSES' ASSOCIATION OF RIVERVIEW HOSPITAL V. RIVERVIEW HEALTH ASSOCIATION 1966 JAN. OLRB MTHLY. REP. 743. IN THAT CASE THE BOARD FOUND ON THE ADMISSION OF THE HOSPITAL THAT THE HEAD NURSES DID NOT EXERCISE MANAGERIAL FUNCTIONS. HOWEVER, THE BOARD DECLARED THAT DAY SUPERVISORS, WHO OCCUPIED A HIGHER POSITION THAN HEAD NURSES, WERE

INCLUDED IN THE BARGAINING UNIT ALTHOUGH OTHER SUPERVISORS WERE EXCLUDED. THE BOARD FURTHER STATED AT P 744:

> "5. WE WISH TO MAKE IT CLEAR THAT OUR DECISION AS TO THE COMPOSITION OF THE BARGAINING UNIT AND AS TO THE STATUS OF THE SEVERAL SUPERVISORS IN THIS CASE IS BASED ON THE EVIDENCE PRESENTED IN THIS CASE. OUR DECISION IS NOT TO BE TAKEN AS AN INDICATION THAT, IN FUTURE CASES, NURSES CLASSIFIED AS SUPERVISORS, HEAD NURSES OR ASSISTANT HEAD NURSES ARE, BY REASON OF THEIR TITLES, TO BE AUTOMATICALLY INCLUDED IN OR EXCLUDED FROM A BARGAINING UNIT. PERSONS CARRYING THE SAME TITLES IN DIFFERENT HOSPITALS MAY WELL HAVE DIFFERENT DUTIES AND RESPONSIBILITIES AND EACH CASE WILL HAVE TO BE DETERMINED ON ITS OWN PECULIAR FACTS."

14. IT IS WITH ALL THESE CONSIDERATIONS IN MIND THAT WE APPROACH THE TASK OF DETERMINING WHETHER OR NOT THE HEAD NURSES IN THIS CASE EXERCISE MANAGERIAL FUNCTIONS.

15. MRS. C. DAVIES WHO IS A HEAD NURSE, WAS EXAMINED AND THE PARTIES AGREED THAT THE EVIDENCE OF MRS. DAVIES AS HEAD NURSE IS REPRESENTATIVE OF THE DUTIES AND RESPONSIBILITIES OF ALL OTHER PERSONS CLASSIFIED AS HEAD NURSE.

16. THE EVIDENCE WITH RESPECT TO MRS. DAVIES INDICATES THAT SHE REPORTS TO THE ASSISTANT DIRECTOR OF NURSES IF SHE HAS ANY PROBLEMS; SHE ASSIGNS PATIENTS TO THE STAFF AND SUPERVISES THE NURSING CARE; SHE PREPARES THE YEARLY BUDGET, MAKES UP TIME SCHEDULES FOR THE STAFF AND IS RESPONSIBLE AND SUPERVISES IN THE INTENSIVE CARE UNIT. SHE ALSO IS RESPONSIBLE FOR THE TEACHING AND ORIENTATION OF THE STAFF AND SHE ASSIGNS JOBS AND EVALUATES THE NURSES. HER WORK IS MAINLY CONCERNED WITH DESK DUTIES.

17. IF THESE HAD BEEN HER DUTIES AND RESPONSIBILITIES WITHOUT QUALIFICATION THIS HEAD NURSE MAY HAVE BEEN EXCLUDED FROM THE BARGAINING UNIT. HOWEVER, THE TOTALITY OF THE EXAMINATION SO QUALIFIES THE DUTIES AND RESPONSIBILITIES OF THE HEAD NURSE THAT WE ARE SATISFIED THAT SHE DOES NOT FALL WITHIN THE CRITERIA SET FORTH IN <u>THE HYDRO CASE</u>, FOR DETERMINING MANAGERIAL PERSONNEL. FOR EXAMPLE, WHEN ASKED WHETHER OR NOT SHE COULD RECOMMEND HIRING SHE COULD NOT RECALL BEING TOLD THAT SHE COULD, BUT SHE TESTIFIED "I IMAGINE I COULD." HER TESTIMONY WAS TO THE SAME EFFECT WITH RESPECT TO HIRING AND SHE THEN WENT ON TO SAY THAT SHE HAS NEVER RECOMMENDED HIRING OR FIRING. IN DISCUSSING EVALUATION SLIPS FOR

NURSES SHE TESTIFIED THAT SHE DOES THESE ONLY WHEN FORMS ARE SENT TO HER BY THE OFFICE - SHE DOES NOT INITIATE THESE FORMS. THE FORMS DO NOT AFFECT SALARIES, AND ARE "WITH REGARD TO APPEARANCE, DEPENDABILITY, ATTITUDE, TEACHABILITY AND INITIATIVE." CF. THE CORPORATION OF THE COUNTY OF HALTON 1969 MARCH OLRB MTHLY. REP. 1271. WE CONCLUDE THAT HER FUNCTION CONCERNING THESE FORMS IS OF A MECHANICAL NATURE AND SHE MAKES NO FINAL DECISION WITH RESPECT TO THESE REPORTS.

18. WHEN ASKED ABOUT DISCIPLINE SHE STATED THAT SHE WOULD SPEAK TO A NURSE WHO WAS DOING HER JOB AND TELL HER TO DO IT RIGHT, BUT IF THIS DID NOT WORK SHE WOULD GO TO THE DIRECTOR OF NURSING. PERMEATING THE EXAMINER'S REPORT ARE VARIOUS EXAMPLES OF COMMUNICATING TO A SUPERIOR ABOUT MATTERS THAT WOULD NORMALLY FALL TO SOMEONE WHO IS MANAGERIAL. IN FACT THE CONTINUAL REPORTING ON MINOR MATTERS ALTERED THE SUGGESTED MANAGERIAL FUNCTION OF THIS HEAD NURSE AS IT FIRST APPEARED IN THE EXAMINER'S REPORT. FOR EXAMPLE, IF HELP WAS NEEDED, SHE COULD NOT ASSIGN A NURSE TO OVERTIME WITHOUT CHECKING WITH THE DIRECTOR OF NURSES; ALTHOUGH SHE PREPARES WORK SCHEDULES, ONCE POSTED SHE COULD NOT CHANGE THE SCHEDULES EVEN IF AN EMERGENCY AROSE WITHOUT CONSULTING SOMEONE OF HIGHER AUTHORITY; SHE ALSO CONSULTS WITH THE DIRECTOR OF NURSING IF EMPLOYEES WANTED TIME OFF OR CHANGES IN A DAY OFF, OR IF THEY MAKE A HABIT OF ARRIVING LATE.

19. WHILE INITIALLY SUGGESTING THAT SHE PREPARES A YEARLY BUDGET, WHEN CROSS-EXAMINED SHE STATED SHE DID NOT KNOW THE YEARLY BUDGET, BUT SHE ASKS FOR NECESSARY EQUIPMENT AND A DISCUSSION IS HELD WITH THE INTENSIVE CARE COMMITTEE AT A MEETING. HER REQUESTS ARE SOMETIMES DENIED. SHE DOES NOT ESTABLISH POLICY WITH RESPECT TO SALARIES, SICK LEAVE, HOURS OF WORK OR REDUCTION OF WORK, NOR DOES SHE HAVE ANYTHING TO DO WITH THE PERSONNEL OR STAFF.

20. MRS. DAVIES STATED THAT ALTHOUGH THERE ARE 22 NURSES ON HER FLOOR PER DAY, AND SHE IS RESPONSIBLE FOR THE FLOOR FOR 24 HOURS, THAT SHE IS ON THE FLOOR ON THE DAY SHIFT WITH FOUR OTHER REGISTERED NURSES AND THAT THE WARD AIDES ARE UNDER HER SUPERVISION. ALTHOUGH MRS. DAVIES STATED THAT SHE IS RESPONSIBLE FOR THE FLOOR 24 HOURS PER DAY SHE IS NOT PRESENT FOR SIXTEEN HOURS OF THAT DAY. THE STATEMENT THAT SHE SUPERVISES THE WARD AIDES APPEARS TO BE OF SOME SIGNIFICANCE. HOWEVER, THE WORD "SUPERVISE" ON THE FACE OF MANY EXAMINER'S REPORTS HAS BECOME AN EPITHET WHICH RELIEVES THE PARTIES OF A PENETRATING EXAMINATION OF ACTUAL DUTIES AND RESPONSIBILITIES. THE WORDS "SUPERVISE", "SUPERVISOR" AND VARIATIONS OF THOSE WORDS DO NOT OF NECESSITY CHARACTERIZE THE PERSON EXAMINED AS PERFORMING MANAGERIAL FUNCTIONS. IN THIS CASE, UPON READING THE TOTAL

EXAMINATION, WE ARE OF THE OPINION THAT MRS. DAVIES PERFORMS CERTAIN PAPER WORK AND ADMINISTRATIVE DUTIES SUCH AS SCHEDULING, ASSIGNING NURSES AND OTHERS TO PATIENTS AND KEEPING RECORDS OF THE EMPLOYEES' TIME AND LATENESS, WHICH ARE REPORTED TO THE DIRECTOR OF NURSING. AS SUCH, SHE CHARACTERIZES HER DUTIES AS "DESK DUTIES". WE THEREFORE UNDERSTAND THE WORK "SUPERVISE" IN THE CONTEXT OF THIS EXAMINATION AS DIFFERING FROM THE NORMAL NURSING DUTIES BUT NOT CONTAINING THE QUALITY OF BEING MANAGERIAL.

21. HAVING REGARD TO ALL THE AFORSAID CONSIDERATIONS IN ASSESSING THE PARTICULAR FACTS OF THIS CASE WE CONCLUDE THAT MRS. C. DAVIES DOES NOT EXERCISE THAT QUALITY OF SUPERVISION, CONTROL, AND INDEPENDENT DISCRETION WHICH ARE NECESSARY INGREDIENTS FOR FINDING THAT A PERSON EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B). WE FIND THAT SHE DOES NOT FORMULATE, DETERMINE AND EFFECTUATE MANAGERIAL POLICIES, AND THAT SHE MERELY IMPLEMENTS DECISIONS WITHIN A CIRCUMSCRIBED AREA. ACCORDINGLY, WE FIND THAT THE HEAD NURSES ARE WITHIN THE BARGAINING UNIT.

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23. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: FEBRUARY 19, 1970.

1. I DISSENT FROM THAT PART OF THE MAJORITY DECISION WHICH INCLUDES HEAD NURSES IN THE BARGAINING UNIT.

2. I HAVE ABSOLUTELY NO HESITATION IN FINDING THAT THE HEAD NURSES IN THIS HOSPITAL SHOULD BE EXCLUDED AS EXERCISING MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

3. IT IS AN INDISPUTABLE FACT THAT IN PREVIOUS CASES BEFORE THIS BOARD, DEALING WITH HOSPITALS, THE BOARD HAS ALMOST INVARIABLY EXCLUDED HEAD NURSES FROM THE BARGAINING UNIT. THE PRECEDENT FOR SUCH A CONCLUSION IS, TO ME, ALMOST OVERWHELMING. SEE:-

(1) BOARD FILE NO. 11456-65-R BROCKVILLE GENERAL HOSPITAL

(2) " " " 13076-67-R PEEL MEMORIAL HOSPITAL

(3) " " " 13141-67-R QUEENSWAY GENERAL HOSPITAL (2 UNITS)

(4) " " " 13197-67-R MCKELLAR GENERAL HOSPITAL (2 UNITS)

(5)	Board File No.	13448-67-R	The Hamilton Civic Hospitals (2 units)
(6)	" " "	13483-67-R	St. Josephs General Hospital (2 units)
(7)	" " "	16532-69-R	North Bay Hospital Commission operating North Bay Civic Hospital
(8)	" " "	12329-67-R	St. Joseph's General Hospital Peterborough
(9)	" " "	13901-67-R	Trustees of the Ottawa Civic Hospital
(10)	" " "	14076-67-R	The Metropolitan General Hospital
(11)	" " "	14496-68-R	Huntsville District Memorial Hospital
(12)	" " "	14751-68-R	The Sisters of St. Joseph of the Diocese of London in Ontario
(13)	" " "	14824-68-R	Sydenham District Hospital
(14)	" " "	16136-69-R	Hotel Dieu Hospital, St. Catharines
(15)	" " "	16455-69-R	The Board of Commissioners of the Guelph General Hospital

4. I have great difficulty in concluding that the head nurses in this bargaining unit perform duties so dissimilar to those in the preceding 15 cases, that they should be excluded from this unit.

5. The bulk of the decisions of the Board in dealing with hospital units is relatively recent in the ambit of the Board's jurisprudence.

6. In examining the duties and responsibilities of such persons as head nurses, the Board has adopted certain considerations in ascertaining whether such persons exercise managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act.

7. The section has remained constant and in my opinion the Board has not heretofore adopted the standard of managerial authority or evidentiary proof that is suggested by paragraphs 6 to 13 inclusive of the majority decision in hospital cases.

8. INDEED, I AM OF THE OPINION THAT THE IMPLICATIONS FROM THAT PORTION OF THE MAJORITY DECISION ARE MOST SERIOUS AND MAY VERY WELL SHACKLE THE HOSPITAL IN THE ORDERLY CONDUCT OF THE HOSPITAL BY REMOVING PERSONS WHICH IT HITHERTO THOUGHT TO BE MANAGERIAL AND INCLUDING THEM IN THE BARGAINING UNIT.

9. IN THE CORPORATION OF THE BOROUGH OF ETOBICOKE CASE, BOARD FILE No. 15676-68-R, THE BOARD IN DISCUSSING WHETHER NURSING SUPERVISORS SHOULD BE INCLUDED IN OR EXCLUDED FROM THE BARGAINING UNIT SAID:-

> "THE DUTIES AND RESPONSIBILITIES OF THE NURSING SUPERVISORS IN THIS CASE BEAR A SIMILARITY IN CERTAIN IMPORTANT AREAS TO THE DUTIES AND RESPONSIBILITIES OF HEAD NURSES WHO WERE EXCLUDED FROM THE BARGAINING UNIT IN NURSES ASSOCIATION BROCKVILLE GENERAL HOSPITAL v. BROCKVILLE GENERAL HOSPITAL 1967 JANUARY 776 @ 781, 782. IN THIS CASE, AS IN THE BROCKVILLE GENERAL HOSPITAL CASE, THE EMPLOYEES CHALLENGED, (A) REPRIMAND, (B) PREPARE EVALUATIONS WHICH AFFECT MERIT INCREASES, (C) ATTEND POLICY MEETINGS WHERE THEY MAKE RECOMMENDATIONS AND (D) DEVOTE MOST OF THEIR TIME TO ADMINISTRATIVE AND SUPERVISORY DUTIES RATHER THAN TO NURSING CARE. IN ADDITION NURSING SUPERVISORS (E) ASSIGN WORK, (F) GRANT TIME OFF, AND (G) RECEIVE HIGHER SALARIES. HAVING REGARD TO ALL THESE FACTORS WE FIND THAT NURSING SUPERVISORS EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

10. MAY I NOW COMPARE THE CRITERIA USED BY THE BOARD IN THE PRECEDING CASE WHERE THE CATEGORY WAS FOUND TO BE MANAGERIAL, AND APPLY IT TO THE ANSWERS GIVEN BY THE HEAD NURSE IN THE INSTANT CASE.

(A) "REPRIMAND" - "THE WITNESS SAID SHE WOULD DISCIPLINE THE STAFF IF THEY WERE NOT DOING THEIR WORK PROPERLY, THAT IS SHE WOULD SPEAK TO THEM ABOUT IT." CONTRAST THIS WITH THE ETOBICOKE CASE WHERE THE EXAMINEE WHEN ASKED IF SHE WOULD REPRIMAND EMPLOYEES, ANSWERED "YES, I WOULD DISCUSS IT WITH THEM."

(B) "PREPARE EVALUATIONS WHICH AFFECT MERIT INCREASES".

THE HEAD NURSES IN THE INSTANT CASE COMPLETE EVALUATION REPORTS WHICH ARE SIMILAR TO THOSE IN THE ETOBICOKE CASE. THE MAJORITY, IN DISCUSSING EVALUATION SLIPS FOR NURSES, STATE THAT SHE DOES NOT INITIATE THE FORMS WHICH ARE SENT TO HER BY THE OFFICE AND THAT THE EVALUATION FORMS DO NOT AFFECT SALARIES.

I HAVE GREAT DIFFICULTY IN DETERMINING HOW THE MAJORITY MADE THE FINDINGS THAT THE EVALUATION FORMS DO NOT AFFECT SALARY.

THE FORMS ARE ENTITLED "STAFF EVALUATION" AND REQUIRE THE SIGNATURE OF THE HEAD NURSE TOGETHER WITH HER REMARKS ON THE PERSON SHE IS EVALUATING. ON THE FORM ARE 11 HEADINGS E.G. "APPEARANCE", "DEPENDABILITY", "ACCURACY", "QUANTITY", "ATTITUDE TOWARD WORK", "TEACHABILITY", INITIATIVE", "ATTITUDE TOWARDS TEACHERS", "QUALITY OF WORK", "ATTITUDE TOWARD CO-WORKERS", "KNOWLEDGE OF AND APPLICATION OF POLICIES", "PROCEDURES" AND "LEADERSHIP ABILITIES". UNDER EACH HEADING ARE 4 SUB-HEADINGS REQUIRING THE HEAD NURSE TO MARK IN WHICH OF THE FOUR CATEGORIES THE PERSON BEING EVALUATED BELONGS.

THUS, IF THE HEAD NURSE INEVALUATING A PERSON INDICATED THROUGH THE CATEGORIES ENUMERATED THAT HER APPEARANCE WAS "FREQUENTLY UNTIDY", SHE WAS "NOT DEPENDABLE", HER ACCURACY HAD "TOO MANY ERRORS", HER QUANTITY INDICATED "IMPROVEMENT DESIRABLE", HER ATTITUDE TOWARD WORK INDICATED "LACK OF INTEREST", HER INITIATIVE INDICATED "NEEDS DETAILED INSTRUCTION", SHE WAS "DIFFICULT TO HANDLE" IN HER ATTITUDE TOWARDS TEACHERS, THE QUALITY OF WORK "NEEDS IMPROVEMENT", IN HER ATTITUDE TOWARDS CO-WORKERS SHE WAS "RELUCTANT TO CO-OPERATE" AND THAT SHE HAD "POOR" LEADERSHIP QUALITIES, DO MY COLLEAGUES IN THE MAJORITY DECISION SUGGEST THAT THE FORM WOULD NOT AFFECT THE SALARY OF THAT PERSON? INDEED, I AM OF THE OPINION THAT IF THE HEAD NURSE PREPARED SUCH AN EVALUATION FORM, AS IT WAS HER DUTY TO DO, NOT ONLY WOULD THE SALARY BE AFFECTED BUT THE EMPLOYMENT OF THE PERSON EVALUATED, WOULD BE TERMINATED.

(c) "ATTEND POLICY MEETINGS"

THE HEAD NURSE IN THE INSTANT CASE ATTENDED POLICY MEETINGS AS DID THE EXAMINEE IN THE ETOBICOKE CASE. THE HEAD NURSE EXAMINED IN THIS CASE STATED: "THE MEETINGS SHE HAS ATTENDED WOULD BE HEAD NURSE STAFF MEETINGS AND SENIOR STAFF MEETINGS. THE HEAD NURSE STAFF MEETINGS DEAL WITH THE STAFF AND FLOOR PROBLEMS AND THE SENIOR STAFF MEETINGS USUALLY CONCERN ONE SPECIFIC TOPIC - USUALLY ADMINISTRATION." IN ADDITION SHE WAS TOLD AT A SENIOR STAFF MEETING DEALING WITH A GRIEVANCE THAT "IF A GRIEVANCE WAS BROUGHT TO HER SHE WAS TO HAND IT OVER TO THE ASSISTANT DIRECTOR OF NURSING IF THE PROBLEM COULD NOT BE HANDLED BY HER." (THE UNDERLINING IS MINE).

(D) "DEVOTE MOST OF THEIR TIME TO ADMINISTRATIVE AND SUPERVISORY DUTIES RATHER THAN TO NURSING CARE."

AMONG THE MANY EXAMPLES OF DUTIES PERFORMED BY THE HEAD NURSE SPRINKLED THROUGHOUT HER EXAMINATION AND WHICH ARE CLEARLY ADMINISTRATIVE AND SUPERVISORY ARE THE FOLLOWING PORTIONS:

"THE WITNESS SAID THAT IN HER POSITION AS THE HEAD NURSE SHE ASSIGNS PATIENTS TO THE STAFF AND SUPERVISES THE NURSING CARE GIVEN ON THE FLOOR. IF ANY EQUIPMENT IS NEEDED, SHE REQUESTS THE NECESSARY ITEMS. SHE SAID SHE PREPARES THE YEARLY BUDGET WITH RESPECT TO NEEDED EQUIPMENT. SHE EVALUATES STAFF. SHE MAKES UP THE TIME SCHEDULE FOR THE STAFF ON HER FLOOR WHICH THEN GOES TO THE OFFICE TO BE CHECKED. SHE IS RESPONSIBLE FOR AND DOES SUPERVISING IN THE EXTENSIVE CARE WARD. SHE IS RESPONSIBLE FOR THE TEACHING AND ORIENTATION OF THE STAFF. SHE SAID SHE DOES GENERAL NURSING ONLY WHEN INSTRUCTING AN EMPLOYEE WHO NEEDS HELP. HER WORK IS MAINLY CONCERNED WITH DESK DUTIES. THE WITNESS SAID THAT THERE ARE 22 NURSES PER DAY ON THE FLOOR UNDER HER SUPERVISION, AND THAT SHE ASSIGNS JOBS TO THESE EMPLOYEES."

MY COLLEAGUES IN THE MAJORITY DECISION ENGAGE IN AN INTERESTING DISSERTATION ON THE MEANING OF THE WORD "SUPERVISE". I PERSONALLY AM CONFIDENT THAT THE HEAD NURSE EXAMINED WAS AWARE OF, AND KNEW THE MEANING OF THE WORD "SUPERVISOR" WHEN SHE GAVE ANSWERS TO THE QUESTIONS. I AM EQUALLY CONFIDENT THAT THE EXAMINER OF THE LABOUR RELATIONS BOARD, TRAINED BY THE BOARD TO EXPRESS HIMSELF CORRECTLY IN PREPARING HIS EXAMINER'S REPORT, WAS EQUALLY AWARE OF, AND KNEW THE MEANING OF THE WORD "SUPERVISE", AND THAT WHEN HE SAYS IN HIS REPORT, "SHE IS RESPONSIBLE FOR AND DOES SUPERVISING IN THE EXTENSIVE CARE WARD", HE MEANT WHAT HE SAID, AND HE INTENDED HIS USAGE OF THE WORD TO BE UNDERSTOOD IN AN INDUSTRIAL RELATIONS SENSE.

IN MY OPINION, THE USE OF THE WORD "SUPERVISE" IN THE CONTEXT OF THIS REPORT CAN ONLY SUGGEST THE EXERCISE OF A MANAGERIAL FUNCTION.

(E) "ASSIGNS WORK"

THE REPORT RECORDS IN PARAGRAPH 11:-

"THE WITNESS SAID THAT THERE ARE 22 NURSES PER DAY ON THE FLOOR UNDER HER SUPERVISION, AND THAT SHE ASSIGNS JOBS TO THESE EMPLOYEES." AT PARAGRAPH 13, THE REPORT RECORDS:- "THE WITNESS SAID THAT SHE ASSIGNED WORK TO EMPLOYEES. IF A NURSE WAS DOING A PARTICULAR JOB FOR WHICH SHE NEEDED EXTRA TIME TO COMPLETE, SHE WOULD DIRECT HER TO CONTINUE WITHOUT GETTING PERMISSION."

(F) "GRANT TIME OFF"

THE WITNESS STATED THAT SHE HAD AUTHORITY TO GRANT TIME OFF AND OVERTIME TO EMPLOYEES WITHIN CERTAIN PRESCRIBED POLICY LIMITS. IN ADDITION, SHE KEEPS A RECORD OR TIME SCHEDULE OF THE EMPLOYEES, SUCH AS WHENTHEY ARE AT WORK, WHEN THEY ARE LATE OR IF THEY LEAVE EARLY.

(G) "RECEIVES HIGHER SALARY"

ALTHOUGH NOT SPECIFICALLY STATED, IT MAY BE INFERRED FROM THE REPORT THAT THE HEAD NURSE RECEIVES A HIGHER SALARY.

IT IS ABUNDANTLY CLEAR IN COMPARING THE REPORT IN THIS CASE WITH THAT IN THE ETOBICOKE CASE, THAT ANY DISTINCTION MADE BETWEEN THE DUTIES OF THE EXAMINEES IN THE RESPECTIVE CASES WOULD BE AN ARTIFICIAL ONE BASED SOLELY ON PERSONS EXPRESSING THEIR DUTIES IN DIFFERENT WAYS. INDEED, IN THE INSTANT CASE THE EVIDENCE OF AN EXERCISE OF MANAGERIAL FUNCTIONS IS EVEN STRONGER THAN THAT IN THE ETOBICOKE CASE IN THAT THERE IS MUCH ADDITIONAL CRITERIA OVER AND ABOVE THE INDICIA CONTAINED IN THE ETOBICOKE CASE.

THUS, HAVING IN MIND THE ALMOST EXCLUSIVE POLICY OF THE BOARD IN EXCLUDING HEAD NURSES AS PERFORMING MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT, AND COMPARING SPECIFICALLY THE DUTIES AND RESPONSIBILITIES OF THE HEAD NURSE IN THE INSTANT CASE WITH THOSE OF THE EXAMINEE IN THE ETOBICOKE CASE, I WOULD FIND MOST ADAMANTLY THAT HEAD NURSES SHOULD BE EXCLUDED FROM THE BARGAINING UNIT.

16005-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. DAVEY TREE EXPERT COMPANY OF CANADA LIMITED (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: J. B. WATERMAN, TONY SPADA, M. J. REILLY FOR THE APPLICANT; W. S. COOK, D. M. WYLIE, B. D. STAMP FOR THE RESPONDENT.

DECISION OF O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER P. J. O'KEEFFE: FEBRUARY 10, 1970.

. . .

2. THE RESPONDENT SUBMITTED THAT ITS EMPLOYEES WERE EXCLUDED FROM THE PURVIEW OF THE ACT PURSUANT TO SECTION 2(c) BECAUSE THE RESPONDENT'S PRIMARY BUSINESS WAS HORTICULTURE. MR. B. D. STAMP, AN OFFICER OF THE COMPANY, TESTIFIED THAT THE COMPANY WAS INCORPORATED PRIMARILY TO PLANT AND CARE FOR TREES AND SHRUBS FOR PRIVATE HOME OWNERS. THE RESPONDENT IS PRIMARILY INVOLVED IN TREE MOVING AND PLANTING WHICH INVOLVES TREE SURGERY, SPRAYING AND DISEASE AND INSECT CONTROL. THE BALANCE OF ITS BUSINESS OR APPROXIMATELY THIRTY PER CENT IS INVOLVED WITH LINE CLEARING, I.E. THE TRIMMING AND REMOVAL OF TREES FOR MUNICIPALITIES. MR. STAMP STATED "WE LIKE TO CONSIDER OURSELVES AS TREE EXPERTS." THE COMPANY DOES NOT GROW OR CULTIVATE ITS OWN TREES BUT PURCHASES ITS STOCK FROM LOCAL NURSERIES

3. HAVING REGARD TO THE BUSINESS OF THE RESPONDENT COMPANY AND HAVING REGARD TO THE DECISION OF THE BOARD IN CEDARVALE TREE SERVICES LIMITED, BOARD FILE # 16210-69-R DATED FEBRUARY 10TH, 1970 (UNREPORTED), THE BOARD FINDS THAT THE RESPONDENT IS NOT ENGAGED IN HORTICULTURE.

4. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

. . .

6. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT WORKING FOREMEN ARE INCLUDED IN THE BARGAINING UNIT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C. FEBRUARY 10, 1970.

I DISSENT.

HAVING REGARD TO THE BUSINESS OF THE RESPONDENT AND FOR THE REASONS WHICH I GAVE IN THE DECISION OF THE BOARD IN CEDARVALE TREE SERVICES LTD. BOARD FILE #16210-69-R DATED FEBRUARY 10TH, 1970

(UNREPORTED), I WOULD HAVE FOUND THAT THE RESPONDENT IS ENGAGED IN HORTICULTURE AND I WOULD HAVE DISMISSED THE APPLICATION.

16048-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. BRAYSHAWS STEEL LIMITED (RESPONDENT) v. SHOPMEN'S LOCAL UNION NO. 743 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFL, CIO, CLC) (INTERVENER).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: IAN SCOTT, HENRY GAREAU, VAUGHN MCGREGOR FOR THE APPLICANT; G. B. WEILER, G. M. ADAMS FOR THE RESPONDENT; R. DOSKIE, A. M. MINSKY FOR THE INTERVENER.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER P. J. O'KEEFFE: FEBRUARY 26, 1970.

1. THIS IS AN APPLICATION FOR CERTIFICATION BY THE APPLICANT TO BE CERTIFIED AS THE BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT IN THE SHOP. OUTSIDE ERECTION EMPLOYEES ARE COVERED BY AN AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT. THE INTERVENER AND THE RESPONDENT OBJECT TO THIS APPLICATION ON THE BASIS THAT IT IS UNTIMELY BECAUSE OF A COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT WHICH WAS EFFECTIVE FROM APRIL 12TH, 1969. ON THE OTHER HAND, THE APPLICANT CONTENDS THAT SUCH AN AGREEMENT IS NOT A BAR BECAUSE THE INTERVENER ABANDONED ITS BARGAINING RIGHTS AND DID NOT HAVE THE RIGHT TO ENTER INTO THE AGREEMENT; THERE WERE NO EMPLOYEES OF THE RESPONDENT ON THE DATE THE AGREEMENT WAS SIGNED AND IN ANY EVENT IT WAS SIGNED IN THE SHADOW OF THE APPLICANT'S ORGANIZING CAMPAIGN.

2. AT THE REQUEST OF THE APPLICANT AT THE FIRST HEARING IN THIS MATTER, AN EXAMINER WAS AUTHORIZED TO INQUIRE INTO AND TO REPORT TO THE BOARD ON THE EMPLOYMENT STATUS OF THE RESPONDENT ON THE DATE OF THE APPLICATION AND WITHIN THE 30 DAYS PRIOR TO THAT DATE. THE INTERVENER AND THE RESPONDENT SOUGHT TO EXPAND THE SCOPE OF THE INQUIRY OF THE EXAMINER, HOWEVER AFTER CONSIDERING THE REPRESENTATION OF THE PARTIES SET OUT IN THEIR LETTERS FOLLOWING THE EXAMINER'S HEARING, THE BOARD GRANTED THE REQUESTS OF THE INTERVENER AND THE RESPONDENT AND DECIDED TO ALLOW ALL THE PARTIES TO ADDUCE FURTHER EVIDENCE AND REPRESENTATIONS ON THE MATTERS AT ISSUE TO THE BOARD AT FURTHER HEARINGS FOR THAT PURPOSE.

3. It is not in dispute that the intervener and the respondent signed an agreement on or about April 9th, 1969, which was to be effective as and from April 12th, 1969, and on the date this agreement was signed there were no employees of the respondent. The parties to the agreement contend that it is a valid collective agreement which operates as a bar to this application. The intervener claims its bargaining rights for employees of the respondent flow from voluntary recognition by the respondent in 1956 through a collective agreement made between those parties, which rights have been preserved to the present agreement and never abandoned. Further, on the day the agreement in question became effective, there were three employees of the respondent at work. Although the parties gave the Board a great deal of historical evidence, it is sufficient for the purposes of this decision to deal briefly with the background of the dispute as follows. In 1954 Local 759 of the intervener was certified as bargaining agent for the field erection employees of the respondent and a successive number of collective agreements between the parties followed for that group. In 1956 a collective agreement was entered into between Local 743 of the intervener and the respondent covering the inside or shop employees. This relationship continued until 1962. An application for termination was made to the Board but it was dismissed on June 5th, 1962 (Board File 3146-61-R). Negotiations continued during 1963 but in December 1963 or February 1964 the respondent entered into an agreement with Northwestern Structural Steel Limited (hereinafter referred to as Northwestern) to supply the labour force to the respondent. From that time to April 11, 1969 the respondent did not have any employees within the scope of the bargaining unit represented by Local 743. Great Lakes Structural Steel Company Ltd. (hereinafter referred to as Great Lakes) purchased the shares of the respondent in October 1968 and it then became a wholly owned subsidiary of Great Lakes. Great Lakes had previously purchased M. F. Mills Co. which had had a bargaining relationship with Local 743 since the early 1950's. Great Lakes therefore entered into a collective agreement with Local 743 of the intervener in February 1969 following negotiations which commenced in November 1968. Prior to that collective agreement, conciliation services had been granted, an offer made and rejected by the employees, and a lockout had ensued. During those negotiations, the question of the representation for Brayshaw employees had been brought up by the intervener but the representatives of Great Lakes had then refused to discuss that matter. In February or March, Great Lakes decided to phase out its fabrication operations and to transfer them to the respondent, but Great Lakes would continue to look after the field erection operations.

THE AGREEMENT BETWEEN THE RESPONDENT AND NORTHWESTERN EXPIRED IN FEBRUARY 1969, BUT WAS MUTUALLY EXTENDED TO APRIL 11TH, 1969 AFTER WHICH DATE NORTHWESTERN COMMENCED ITS OWN OPERATIONS AT ANOTHER SITE IN COMPETITION WITH THE RESPONDENT. IN MARCH 1969 THE APPLICANT APPLIED FOR CERTIFICATION OF THE EMPLOYEES OF NORTHWESTERN WORKING IN THE RESPONDENT'S BUILDING. LOCAL 750 OF THE IRONWORKERS INTERVENED IN THAT APPLICATION TO PROTECT ITS RIGHTS FOR OUTSIDE EMPLOYEES ONLY. A HEARING IN THAT APPLICATION WAS SET FOR APRIL 9TH, 1969 BUT BECAUSE OF A LATE POSTING IT WAS ADJOURNED TO APRIL 16TH. A CERTIFICATE WAS ISSUED TO THE APPLICANT IN THAT MATTER AND, SUBSEQUENTLY, A COLLECTIVE AGREEMENT ENTERED INTO.

4. IT IS THE EVIDENCE OF MR. GILBERT ADAMS, COMPTROLLER OF THE RESPONDENT, THAT THERE WERE SEVERAL MEETINGS WITH THE INTERVENER PRIOR TO THE EXECUTION OF THE PRESENT AGREEMENT BETWEEN THEM AND IS IDENTICAL TO THE AGREEMENT NEGOTIATED FOR GREAT LAKES EXCEPT FOR AN EXTRA YEAR IN ITS TERM AND AN EXTRA 5 PER CENT FOR THAT FINAL YEAR. ON APRIL 11TH, GREAT LAKES LAID OFF ALL ITS EMPLOYEES. THREE OF SUCH EMPLOYEES WERE HIRED BY THE RESPONDENT ON APRIL 12TH AND THE REMAINDER WERE HIRED ON APRIL 14TH; SOME FROM GREAT LAKES AND SOME FROM NORTHWESTERN. TWO OF THE EMPLOYEES WHICH THE RESPONDENT ALLEGED TO HAVE HIRED ON APRIL 12TH WERE MEMBERS OF THE INTERVENER AND WERE SIGNATORIES TO THE AGREEMENT. THE EVIDENCE IS THAT THEY WERE PAID BY BRAYSHAW FOR TWO HOURS WORK ON SATURDAY, APRIL 12TH, STATED ON THEIR PUNCH CARDS TO BE OVERTIME WORK. THERE IS CONFLICTING EVIDENCE AS TO WHETHER THESE THREE PERSONS ACTUALLY WORKED ON THAT DAY AND FOR HOW LONG, BUT THERE IS NO DOUBT THAT THEY WERE AT THE RESPONDENT'S PLANT WITH A TRUCK FROM GREAT LAKES WHICH HAD SOME TOOL BOXES IN IT. THEIR TIME CARDS WERE PUNCHED ONLY AT 10:17 BUT MR. BACHYNSKI, A SUPERVISOR, TESTIFIED THAT THE MEN HAD ARRIVED AT WORK ABOUT 8:00 A.M. AND HAD LEFT THE PLANT AT THE TIME SHOWN ON THE TIME CARD AND WERE PAID FOR TWO HOURS WORK AT OVERTIME RATES. THE REMAINDER OF THE MEN WERE HIRED BY THE RESPONDENT ON APRIL 14TH AND SIGNED FRESH T.D.1 INCOME TAX FORMS AT THAT TIME.

5. THE INTERVENER CONTENDS THAT IT HAD THE RIGHT TO ENTER INTO THE AGREEMENT DATED APRIL 11TH, 1969, ON THE BASIS THAT IT HAD BARGAINING RIGHTS FOR THOSE PERSONS WHO WOULD BE IN THE BARGAINING UNIT STEMMING FROM A PREVIOUS BARGAINING RELATIONSHIP SINCE 1956 AND BY VIRTUE OF SECTION 47A OF THE ACT. THE INTERVENER FURTHER SUBMITTED THE AGREEMENT WAS A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE ACT AND IS THEREFORE A BAR TO THIS APPLICATION. FROM FEBRUARY 1964 TO APRIL 11TH 1969 THERE WERE NO EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WHICH WOULD BE

CLAIMED BY THE INTERVENER, AND BECAUSE OF THIS FACT NO BARGAINING TOOK PLACE BETWEEN THOSE PARTIES. THE INTERVENER CLAIMS, HOWEVER, THAT ITS REPRESENTATION RIGHTS CONTINUED AS THE INTERVENER CONTINUED TO SERVE THE SITUATION THROUGH MR. ROONEY, THE BUSINESS AGENT FOR LOCAL 759, AND WAS ALSO RESPONSIBLE FOR LOCAL 743 WHO CHECKED WITH THE PLANT FROM TIME TO TIME TO SEE WHAT CHANGES, IF ANY, HAD BEEN MADE. THIS HE REPORTED TO MR. CHAPPELL, INTERNATIONAL REPRESENTATIVE OF THE INTERVENER, WHO HAD SO INSTRUCTED HIM TO MAINTAIN CONTACT. HOWEVER, THERE WERE NO FURTHER MEETINGS WITH THE RESPONDENT UNTIL 1969. MR. ROONEY SAID WHILE NEGOTIATING THE AGREEMENT FOR LOCAL 753 IN 1965, WILLIAM BRAYSHAW, HAVING BEEN ASKED ABOUT THE SHOP MEN, ADVISED HIM THAT THERE WERE THEN NO SUCH EMPLOYEES. AS WELL, DURING THE NEGOTIATIONS WITH GREAT LAKES, MR. ROONEY STATED THAT THE RESPONDENT'S SITUATION WAS DISCUSSED AT EVERY MEETING. HE WAS TOLD IN NOVEMBER OR DECEMBER 1968 OF THE TAKEOVER AND THAT THERE WAS A POSSIBILITY OF SOME OF THE GREAT LAKES EMPLOYEES BEING TRANSFERRED TO THE RESPONDENT. THE INTERVENER ATTEMPTED TO PROTECT THESE PEOPLE. MR. CHAPPELL SAID THAT AFTER 1962 THE SITUATION WAS DORMANT AND THE EMPLOYEES WERE NOT INTERESTED, AND FOLLOWING A "NO BOARD" REPORT IN 1963 AND THE WALKOUT IN 1964 NO STEPS WERE TAKEN BY THE INTERVENER TO NEGOTIATE A COLLECTIVE AGREEMENT OR TO ATTEMPT ANY OTHER ECONOMIC ACTION AGAINST THE COMPANY. MR. ROONEY HAD HEARD IN 1963 SOME TALK OF A PROFIT SHARING PLAN, BUT THE UNION HAD NOTHING TO DO WITH THIS. AT THE TIME THE WALKOUT TOOK PLACE THE EMPLOYEES APPROACHED THE UNION ONLY AFTER IT HAD STARTED BUT MR. ROONEY DID HELP THEM ON THE PICKET LINE. IT WAS AFTER THAT WALKOUT WHEN NORTHWESTERN ENTERED THE PICTURE. THE INTERVENER MADE NO ATTEMPT TO ORGANIZE THE EMPLOYEES OF NORTHWESTERN NOR WERE THERE ANY ATTEMPTS TO BARGAIN WITH THE RESPONDENT UNTIL 1968 WHEN DURING THE NEGOTIATIONS FOR GREAT LAKES THE SUBJECT WAS BROACHED. MR. ROONEY COULD NOT SAY WHETHER EMPLOYEES WERE ISSUED DUES BOOKS NOR DID HE MAKE AN EFFORT TO OBTAIN DUES FROM EMPLOYEES OF THE RESPONDENT FOR SOME TIME PRIOR TO FEBRUARY 1964. HE WAS NOT PRESENT AT ANY UNION MEETINGS NOR WAS HE AWARE OF ANY ELECTION OF OFFICERS FOR THE LOCAL. HE COULD NOT RECALL ANY GRIEVANCES BEING PROCESSED AT THAT TIME. MR. CHAPPELL TESTIFIED THAT AT THE TIME THE AGREEMENT WAS SIGNED IN APRIL 1969 THERE WERE NO EMPLOYEES OF BRAYSHAW, BUT HE THOUGHT THAT THOSE EMPLOYEES WHO WERE MEMBERS OF THE INTERVENER AND WHO WERE BEING TRANSFERRED WERE IN EFFECT EMPLOYED BY THE RESPONDENT. THE AGREEMENT WAS DISCUSSED WITH EMPLOYEES OF GREAT LAKES WHO WOULD BE AFFECTED BUT NOT WITH THOSE OF NORTHWESTERN EVEN THOUGH HE KNEW THAT EMPLOYEES FROM THAT COMPANY WOULD BE HIRED BY THE RESPONDENT TOO.

6. JOE SAFER, AN EMPLOYEE OF GREAT LAKES, HAD BEEN EMPLOYED BY THE RESPONDENT SINCE 1957 IN MAINTENANCE WITH RESPECT TO THE MECHANICAL FABRICATION SHOP AND DID JOIN THE INTERVENER; PAID AN INITIATION FEE AND PAID DUES FOR NOT MORE THAN ONE YEAR BUT CONTINUED

TO BE EMPLOYED UNTIL 1964. PRIOR TO THE WALKOUT OF ABOUT HALF THE FABRICATING CREW IN 1964, A PROFIT SHARING SCHEME HAD BEEN STARTED WHEREBY EMPLOYEES WOULD RECEIVE PREFERRED SHARES FOR OVERTIME WORK AND PART OF THE ENSUING PROBLEM WAS THAT THE EMPLOYEES WANTED TO CASH THESE SHARES AND GET MORE MONEY FOR OVERTIME. HE SAID HE WAS NOT THEN PAYING DUES NOR DID HE KNOW OF ANY PERSONS WHO WERE. THERE WERE NO UNION NOTICES POSTED, OR ANY MEETINGS HELD, OR ACTION TAKEN TO NEGOTIATE AN AGREEMENT AT THAT TIME. THE WALKOUT ENDED WHEN THE EMPLOYEES WERE HIRED BY NORTHWESTERN AND THEY RETURNED TO THE SAME BUILDING WITH THE SAME WORKING CONDITIONS. THIS CONTINUED UNTIL THEY WERE HIRED BY THE RESPONDENT ON APRIL 14TH, 1969. HE SIGNED A FRESH T.D.1 INCOME TAX FORM AT THAT TIME. MR. SAFER SAID THAT THE EMPLOYEES OF NORTHWESTERN WENT TO THE APPLICANT THEMSELVES TO COMMENCE AN APPLICATION FOR CERTIFICATION ON THEIR BEHALF. AFTER A STRIKE AT GREAT LAKES IN 1968/69, SAFER AND OTHERS TALKED TO MR. HUNT, PRESIDENT OF THE RESPONDENT, WHO WANTED THE NON-UNION EMPLOYEES TO DISCUSS WHAT WOULD HAPPEN WHEN THE GREAT LAKES EMPLOYEES CAME OVER TO THE RESPONDENT'S PLANT AND ASKED THEM TO FORM A UNION. IN THIS RESPECT HE SHOWED THEM THE COLLECTIVE AGREEMENT WITH GREAT LAKES AND THE INTERVENER. THIS WAS FOLLOWED BY A FURTHER MEETING A WEEK LATER WITH THE SAME PERSONS IN ATTENDANCE AND A DISCUSSION TOOK PLACE ABOUT A SHOP UNION AND THE OTHER AGREEMENT. ON THE MONDAY FOLLOWING THE CESSATION OF THE AGREEMENT WITH NORTHWESTERN, THE EMPLOYEES RETURNED TO WORK ON THE SAME JOBS, WITH THE SAME EQUIPMENT, BUT WERE THEN EMPLOYEES OF BRAYSHAW. SIMILARLY, THE EVIDENCE OF VERNON ROWE WAS THAT HE HAD BEEN EMPLOYED BY THE RESPONDENT FROM 1959 TO FEBRUARY 1964 AND BY NORTHWESTERN UNTIL APRIL 11TH, 1969, WHEN HIS SERVICES WITH THAT COMPANY WERE TERMINATED. ON THAT DAY HE WAS WORKING ON A SPECIAL PROJECT IN THE YARD AS A SAWYER AND RETURNED ON MONDAY AS AN EMPLOYEE OF THE RESPONDENT AND CONTINUED WITH THE SAME PROJECT. ON FRIDAY, BEFORE HE KNEW HE WAS TERMINATED, HE ASKED HIS FOREMAN ABOUT WORKING OVERTIME ON SATURDAY WHICH IS QUITE USUAL, AND HE WAS TOLD THERE WAS NO OVERTIME WORK FOR HIM.

7. MR. HENRY GAREAU, STAFF REPRESENTATIVE OF THE APPLICANT, TESTIFIED THAT ON MARCH 19TH, 1969, 36 EMPLOYEES OF NORTHWESTERN WHO CALLED THEMSELVES BRAYSHAW EMPLOYEES AND WHO WORKED IN THE RESPONDENT'S BUILDING SIGNED APPLICATION CARDS, PAID THE SUM OF $1.00 EACH, AND HELD ELECTIONS. AN APPLICATION FOR CERTIFICATION WAS FILED ON MARCH 21ST, 1969. THE TERMINATION DATE WAS MARCH 31ST AND THE HEARING DATE WAS SET FOR APRIL 9TH, HOWEVER THE NOTICE OF APPLICATION HAD NOT BEEN POSTED; THE TERMINAL DATE WAS EXTENDED FOR THAT PURPOSE AND THE HEARING WAS HELD ON APRIL 16TH. A WEEK AFTER THE APPLICATION WAS MADE HE HAD ADVISED MR. ROONEY OF THE APPLICATION FOR THE 'INSIDE' WORKERS AT BRAYSHAW AND ROONEY DID NOT OBJECT OR INDICATE THAT THE INTERVENER HAD BARGAINING RIGHTS. THE APPLICANT

WAS CERTIFIED FOR THE EMPLOYEES OF NORTHWESTERN AND A COLLECTIVE AGREEMENT WAS SIGNED WITH THAT COMPANY IN SEPTEMBER 1969. BEFORE THE HEARING, HOWEVER, MR. HUNT MET WITH MR. GAREAU AND DISCUSSED THE SITUATION WHEN THE EMPLOYEES WOULD BECOME EMPLOYEES OF THE RESPONDENT AND ASKED GAREAU WHETHER HE WOULD ACCEPT AN AGREEMENT BASED ON THE COLLECTIVE AGREEMENT WITH GREAT LAKES. MR. ADAMS STATED THAT THE COMPANY SOUGHT LEGAL ADVICE ON THIS MATTER AND WAS TOLD THAT THE INTERVENER HAD THE BARGAINING RIGHTS THEREFORE THEY NEGOTIATED WITH THE INTERVENER. MR. HUNT HAD BEEN TOLD BY MR. BRAYSHAW THAT THE EMPLOYEES DID NOT WANT AN INTERNATIONAL UNION AND SO THEY CONTINUED TO TALK TO THE INTERVENER ON APRIL 2ND AND 3RD, 1969. THE APPLICANT DID NOT ENTER INTO AN AGREEMENT WITH BRAYSHAW. THE SAME APPLICATION FOR MEMBERSHIP CARDS USED IN THE NORTHWESTERN APPLICATION WERE TRANSFERRED TO AND USED FOR THE PURPOSE OF THE INSTANT APPLICATION. BETWEEN FEBRUARY 1ST AND APRIL 1ST 1968 THERE WAS AN INTERLOCKING DIRECTORATE OF THE RESPONDENT AND GREAT LAKES. AT THAT TIME GREAT LAKES PERFORMED THE FIELD ERECTION WORK ON THE RESPONDENT'S CONTRACTS AND WAS GOVERNED BY THE COLLECTIVE AGREEMENT WITH THE LAKEHEAD BUILDERS EXCHANGE TO WHICH BOTH COMPANIES WERE PARTIES.

8. WHATEVER BARGAINING RIGHTS THAT WERE ACQUIRED BY THE INTERVENER FOR THE EMPLOYEES OF THE RESPONDENT FLOWED DIRECTLY FROM THE COMPANY VOLUNTARILY RECOGNIZING THE INTERVENER AS BARGAINING AGENT AND A COLLECTIVE AGREEMENT WAS ENTERED INTO IN 1956 AND THERE FOLLOWED A SERIES OF SUCH AGREEMENTS UNTIL 1963. IT APPEARS FROM THE EVIDENCE THAT AT THAT TIME AND UNTIL THE WALKOUT IN FEBRUARY 1964, THE EMPLOYEES TOOK MATTERS INTO THEIR OWN HANDS AND ATTEMPTED TO BARGAIN DIRECTLY WITH THE COMPANY AND ON THEIR FAILURE TO ACHIEVE THEIR DEMANDS, SOME (ABOUT HALF WE ARE TOLD) WENT ON STRIKE. THE INTERVENER TOOK NO PART IN THESE MATTERS AND ONLY BECAME INVOLVED AT ALL AFTER THE STRIKE COMMENCED WHEN MR. ROONEY ASSISTED ON THE PICKET LINES. FOLLOWING AN INJUNCTION PROCEEDING THE MEN WERE EMPLOYED BY NORTHWESTERN AND CONTINUED SO UNTIL APRIL 1969. FOLLOWING THAT, MR. ROONEY CONTINUED TO CHECK ON THE SITUATION WITH EMPLOYEES AND HAROLD BRAYSHAW AND REPORTED FROM TIME TO TIME TO MR. CHAPPELL. FOLLOWING THE ACQUISITION BY GREAT LAKES OF THE SHARES OF THE RESPONDENT, THE INTERVENER COMMENCED NEGOTIATION WITH GREAT LAKES FOR AN AGREEMENT AND WAS ALSO CONCERNED AT A POSSIBLE TRANSFER OF OPERATIONS TO THE RESPONDENT AND WANTED TO PROTECT ITS POSITION IN THAT REGARD. THE COMPANY OBJECTED TO THIS BUT MR. ROONEY PERSISTED IN DISCUSSING THE BRAYSHAW SITUATION THROUGHOUT THESE NEGOTIATIONS. IT WAS AFTER THE AGREEMENT WITH GREAT LAKES WAS SIGNED THAT THE DECISION WAS MADE TO TRANSFER THE FABRICATION TO THE RESPONDENT. AT THAT TIME THE APPLICANT WAS NOT IN THE PICTURE BUT THE INTERVENER COMMENCED NEGOTIATIONS WITH THE RESPONDENT FOR THIS EVENT. WE ARE SATISFIED THAT THE INTERVENER TOOK SOME POSITIVE STEPS BETWEEN 1964 AND 1969 IN ORDER AND WITH THE INTENTION TO PRESERVE ITS BARGAINING RIGHTS AND DID NOT COMPLETELY IGNORE THE SITUATION OR SLEEP ON ITS RIGHTS. SOME CRITICISM CAN BE

LEVELLED AT THE INTERVENER FOR THE CASUAL MANNER IN WHICH IT HANDLED THESE RIGHTS BUT WE ARE NOT PREPARED TO FIND THAT IT ABANDONED THE BARGAINING RIGHTS IN THE CIRCUMSTANCES THAT EXISTED IN THIS CASE.

9. HAVING FOUND THAT THE INTERVENER DID HAVE BARGAINING RIGHTS AT THE TIME THE AGREEMENT WAS ENTERED INTO IT HAD THE RIGHT TO REPRESENT EMPLOYEES IN THE BARGAINING UNIT AND, NOTWITHSTANDING THE FACT THAT THERE WERE NO EMPLOYEES AT THAT TIME, THE COMPANY PROPERLY RECOGNIZED THE RIGHT OF THE INTERVENER TO REPRESENT ITS EMPLOYEES AND TO ENTER INTO A COLLECTIVE AGREEMENT. WHILE SUCH AGREEMENT MIGHT NOT BE IMMEDIATELY EFFECTIVE, IT WOULD BECOME SO WHEN THERE WERE EMPLOYEES IN THE BARGAINING UNIT, AND WE FIND NOTHING IMPROPER IN THAT, PARTICULARLY IN THESE CIRCUMSTANCES WHERE THERE WAS AN INTENDED TRANSFER OF OPERATIONS AND EMPLOYEES. WE FIND THEREFORE THAT THE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT WAS A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(c) OF THE ACT.

10. THE BOARD IN THIS CASE IS ALSO FACED WITH THE SITUATION OF A COLLECTIVE AGREEMENT BEING SIGNED BY THE PARTIES TO IT IN FULL KNOWLEDGE OF AN ORGANIZING CAMPAIGN BY THE APPLICANT OF THE EMPLOYEES, ALBEIT OF ANOTHER COMPANY, BUT WHO WERE IN THE BUILDING OWNED BY THE RESPONDENT AND WHO WORKED ON BEHALF OF THE RESPONDENT. IN ADDITION, BOTH THE RESPONDENT AND THE INTERVENER KNEW AT LEAST BY APRIL 8TH OR 9TH THAT SOME IF NOT ALL OF THESE PERSONS WHO WERE THE SUBJECT OF THE APPLICANT'S CAMPAIGN AT NORTHWESTERN IN WHICH A CERTIFICATE MIGHT ISSUE ON OR ABOUT APRIL 8TH, WOULD BECOME A FEW DAYS LATER, EMPLOYEES OF THE RESPONDENT. WHILE THESE ARE SEPARATE CORPORATE ENTITIES AND MUST BE CONSIDERED IN THAT MANNER, NONETHELESS THE KNOWLEDGE OF THE PARTIES INVOLVED IS IMPORTANT IN ASSESSING THEIR INTENT IN ENTERING INTO THE COLLECTIVE AGREEMENT. WE FIND THAT IN ALL THE CIRCUMSTANCES OF THIS CASE, THE COLLECTIVE AGREEMENT WAS EXECUTED IN THE SHADOW OF THE APPLICANT'S ORGANIZING CAMPAIGN WITH A VIEW TO DEFEAT THE REPRESENTATION OF THE RESPONDENT'S EMPLOYEES BY THE APPLICANT. WE ARE NOT PREPARED THEREFORE TO ALLOW THAT THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER IS A BAR TO THIS APPLICATION. HAVING REGARD, HOWEVER, TO THE COMPETING BARGAINING RIGHTS OF THE APPLICANT AND THE INTERVENER, THE BOARD FINDS THAT IN THIS CASE A REPRESENTATION VOTE SHOULD BE HELD OF THE EMPLOYEES IN THE BARGAINING UNIT.

11. WE THEN HAVE THE SITUATION WHERE THE INTERVENER HAS BARGAINING RIGHTS FOR THE BARGAINING UNIT APPLIED FOR BY THE APPLICANT, WHICH ALSO HAS BY VIRTUE OF THIS APPLICATION, A DIRECT INTEREST. WHILE THE APPLICATION FOR MEMBERSHIP CARDS SUBMITTED BY THE APPLICANT IN THIS MATTER HAD ALSO BEEN USED FOR THE PURPOSES OF THE APPLICANT WITH RESPECT TO NORTHWESTERN, IN ALL THE CIRCUMSTANCES OF THESE PROCEEDINGS IT IS OBVIOUS THAT THE PERSONS CONCERNED ARE ESSENTIALLY

THE SAME AND THE FACT THAT THEY HAD DIFFERENT EMPLOYERS DOES NOT DEROGATE FROM THE FACT OF UNION MEMBERSHIP. WE WILL ACCEPT THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT FOR THE PURPOSES OF THIS APPLICATION.

12. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT THUNDER BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND THOSE PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AF OF L LOCAL UNION 759), CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

13. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 30, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

14. IN ALL THE CIRCUMSTANCES OF THIS MATTER AND PURSUANT TO ITS DISCRETION UNDER THE PROVISIONS OF SECTION 7(2) OF THE ACT, THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE HELD OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 12 ABOVE. VOTERS WILL BE ASKED WHETHER THEY WISH TO BE REPRESENTED BY EITHER THE APPLICANT OR THE INTERVENER.

15. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

16. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: FEBRUARY 26, 1970.

IN VIEW OF THE FACT THAT THE MAJORITY HAVE DIRECTED A REPRESENTATION VOTE AMONG THE EMPLOYEES OF THE RESPONDENT, AND IN THE INTERESTS OF EXPEDIENCY AS A CONSEQUENCE THEREOF, IT IS MERELY MY INTENTION TO RECORD THE CONCLUSIONS I WOULD HAVE REACHED ON THE EVIDENCE WITHOUT DEVELOPING MY ARGUMENT IN SUPPORT OF SUCH CONCLUSIONS.

I WOULD INITIALLY HAVE FOUND ON THE EVIDENCE THAT THE INTERVENER HAD ABANDONED ITS BARGAINING RIGHTS AT THE TIME THE UNITED STEELWORKERS OF AMERICA MADE APPLICATION FOR CERTIFICATION BEFORE THIS BOARD.

AS A RESULT THEREFORE, I WOULD HAVE CERTIFIED THE APPLICANT.

HOWEVER, THE MAJORITY HAVE RULED THAT THERE WAS NO ABANDONMENT BY THE INTERVENER OF ITS BARGAINING RIGHTS.

THAT BEING SO, I WOULD THEN HAVE FOUND THAT THE COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND THE INTERVENER DATED ON OR ABOUT THE 12TH DAY OF APRIL, 1969, WAS A VALID COLLECTIVE AGREEMENT WHICH OPERATED AS A BAR TO THIS APPLICATION.

THE RESULT FLOWING FROM THIS LATTER DECISION, WOULD BE THAT I WOULD HAVE DISMISSED THIS APPLICATION OF THE UNITED STEELWORKERS OF AMERICA.

16210-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. CEDARVALE TREE SERVICES LTD. (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: R. KOSKIE FOR THE APPLICANT; WARREN K. WINKLEY AND J.C. WILKINS FOR THE RESPONDENT.

DECISION OF O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER O. HODGES: FEBRUARY 10, 1970.

1. THE ISSUE IN THIS CASE IS WHETHER THE RESPONDENT IS EXCLUDED FROM THE PROVISION OF THE LABOUR RELATIONS ACT BECAUSE ITS PRIMARY BUSINESS IS HORTICULTURE AND ITS EMPLOYEES ARE EMPLOYED IN HORTICULTURE.

2. THE RESPONDENT INDICATED IN ITS REPLY TO THE APPLICATION THAT THE GENERAL NATURE OF ITS BUSINESS INVOLVED THE TREATMENT OF TREES. THE EVIDENCE INDICATED THAT SEVENTY PER CENT OF ITS TIME WAS SPENT IN PRUNING, STUMPING AND TREE REMOVAL. IN ADDITION TO PERFORMING THOSE FUNCTIONS THE RESPONDENT'S BUSINESS ALSO INVOLVED LIGHTNING TREATMENT AND PROTECTION, CABLING AND BRACING TREATMENT, SPRAYING, CAVITY TREATMENT, BARK TRACING, FEEDING AND FERTILIZING OF TREES AND OTHER ITEMS CONCERNING TREES. THE WORK IS PERFORMED ON INDIVIDUAL TREES AS OPPOSED TO STANDS OR WOOD LOTS AND INVOLVES IN MANY CASES THE TREATMENT OF TREES ON PRIVATE PROPERTY. THE RESPONDENT ALLEGES THAT THE SERVICES THAT ARE REQUIRED INVOLVE A HORTICULTURAL BACKGROUND. THE FOREMEN APPEAR TO HAVE A MORE SPECIALIZED KNOWLEDGE AND

PERFORM MORE SPECIALIZED WORK SUCH AS ATTENDING TO THE TREES' WOUNDS OR CAVITIES. THE EMPLOYEES IN THE PROPOSED BARGAINING UNIT PERFORM MANUAL LABOUR; THEY DO NOT DIAGNOSE PROBLEMS NOR ARE THEY INVOLVED IN RECOMMENDATIONS, BUT THEY ARE INVOLVED IN THE PRUNING OF TREES, STUMP REMOVAL AND THE SPRAYING OR CLEANING OF DEADWOOD FROM THE HYDRO LINES. THE EVIDENCE INDICATES THAT BARGAINING UNIT EMPLOYEES SPEND NINETY PER CENT OF THE TIME DOING WORK UNRELATED TO THE CARE OF TREES. TWO CREWS DO WORK FOR THE HYDRO FULL TIME, WHICH INVOLVES THE TAKING DOWN AND PRUNING OF TREES FOR THE PURPOSE OF CLEARING HYDRO LINES. THE RESPONDENT COMPANY DOES VERY LITTLE TREE PLANTING AND IS NOT INVOLVED IN THE CULTIVATION AND PREPARATION OF SOIL FOR THE CULTIVATION OF TREES.

3. THE RESPONDENT REQUESTED THAT THE BOARD SHOULD STRICTLY CONSTRUE THE LABOUR RELATIONS ACT BECAUSE IT WAS IN DEROGATION OF COMMON LAW RIGHTS. THE APPLICANT SUBMITTED THAT THE LABOUR RELATIONS ACT SHOULD BE LIBERALLY CONSTRUED.

4. WE ARE OF THE OPINION THAT THE APPLICANT'S CONTENTION IS CORRECT AND THAT THE LABOUR RELATIONS ACT IS REMEDIAL LEGISLATION AND SHOULD BE LIBERALLY CONSTRUED. IN REACHING OUR CONCLUSION WE ADOPT THE VIEW OF THE SUPREME COURT OF CANADA IN BAKERY & CONFECTIONERY WORKERS I.U.A. V. SALMI 56 D.L.R. (2D) 193. NOTWITHSTANDING THAT THE COURT IN THAT CASE WAS INTERPRETING THE BRITISH COLUMBIA LABOUR RELATIONS ACT, WE ARE OF THE OPINION THAT THE VIEWS EXPRESSED ARE APPLICABLE TO THE ONTARIO LABOUR RELATIONS ACT. HALL J. SPEAKING FOR THE COURT IN THAT CASE STATED AT P 201:

> "...COUNSEL FOR THE RESPONDENT, CITING WELL-KNOWN AUTHORITIES, EMPHASIZED THAT THE PROVISIONS OF THE LABOUR RELATIONS ACT BEING IN DEROGATION OF COMMON LAW RIGHTS SHOULD BE STRICTLY CONSTRUED. ON THE OTHER HAND, COUNSEL FOR THE APPELLANTS URGED THAT THE LABOUR RELATIONS ACT WAS REMEDIAL LEGISLATION AND SHOULD BE LIBERALLY CONSTRUED.
>
> WHATEVER MERIT THE ARGUMENTS OF THE RESPONDENT HAD AT THE BEGINNING OF LABOUR RELATIONS LEGISLATION, IT SEEMS TO ME THAT IN THE STAGE OF INDUSTRIAL DEVELOPMENT NOW EXISTING IT MUST BE ACCEPTED THAT LEGISLATION TO ACHIEVE INDUSTRIAL PEACE AND TO PROVIDE A FORUM FOR THE QUICK DETERMINATION OF LABOUR-MANAGEMENT DISPUTES IS LEGISLATION IN THE PUBLIC INTEREST, BENEFICIAL TO EMPLOYEE AND EMPLOYER AND NOT SOMETHING TO BE WHITTLED TO A MINIMUM OR NARROW INTERPRETATION IN THE

> FACE OF THE EXPRESSED WILL OF LEGISLATURES WHICH, IN ENACTING SUCH LEGISLATION, WERE AWARE THAT COMMON LAW RIGHTS WERE BEING ALTERED BECAUSE OF INDUSTRIAL DEVELOPMENT AND MASS EMPLOYMENT WHICH RENDERED ILLUSORY THE SO-CALLED RIGHT OF THE INDIVIDUAL TO BARGAIN INDIVIDUALLY WITH THE CORPORATE EMPLOYER OF THE MID-TWENTIETH CENTURY..."

THE RESULT OF OUR ADOPTING THIS VIEW AND IN PARTICULAR THE VIEW THAT THE ACT IS IN THE PUBLIC INTEREST IS THAT THE RESPONDENT WHICH SEEKS TO EXCLUDE EMPLOYEES FROM THE COVERAGE OF THE ACT HAS THE ONUS OF BRINGING BOTH ITS BUSINESS AND ITS EMPLOYEES WITHIN THE PROVISIONS OF SECTION 2(c) OF THE ACT.

5. FOR CONVENIENCE WE SET OUT SECTION 2(c) OF THE ACT.:

> "2. THIS ACT DOES NOT APPLY,
>
> (c) TO A PERSON, OTHER THAN AN EMPLOYEE OF A MUNICIPALITY OR A PERSON EMPLOYED IN SILVACULTURE, WHO IS EMPLOYED IN HORTICULTURE BY AN EMPLOYER WHOSE PRIMARY BUSINESS IS AGRICULTURE OR HORTICULTURE."

6. THE BOARD HAS PREVIOUSLY DEFINED HORTICULTURE AS:

> "THE ART OR PRACTICE OF CULTIVATING OR TILLING AND PREPARING A PIECE OF GROUND APPROPRIATED TO THE CULTIVATION OF HERBS (INCLUDING GRASS), PLANTS, FLOWERS OR VEGETABLES."

McLEAN PEISTER LIMITED, 63 CLLC 1139. THE RESPONDENT IN WRITTEN ARGUMENT SUBMITTED TO THE BOARD THAT "THE BOARD IN THE McLEAN PEISTER LIMITED CASE IS CORRECT. HOWEVER, IT DOES NOT AMPLIFY THE DEFINITION TO DEAL WITH FACT SITUATIONS OTHER THAN WAS SUBJECT OF THE APPLICATION FOR CERTIFICATION." THE RESPONDENT IN EFFECT REQUESTS THE BOARD TO AMPLIFY ITS DEFINITION TO CONFORM WITH THE EVIDENCE GIVEN BY EXPERT WITNESSES CALLED BY THE RESPONDENT. THE RESPONDENT SUBMITS THAT IF THE BOARD WERE TO AMPLIFY THE DEFINITION AS SUBMITTED IT WOULD COVER FACTS OF THE INSTANT CASE.

7. AT THE OUTSET WE ARE OF THE OPINION THAT THE DEFINITION OF HORTICULTURE IS NOT A MATTER FOR EXPERT TESTIMONY. IN THE CIRCUMSTANCES OF THIS CASE WE ACCEPT THE TRADITIONAL POSITION WITH RESPECT TO EXPERT TESTIMONY TAKEN BY THE COURTS AND WE HOLD THAT THE INTERPRETATION OF THE STATUTE IS A MATTER FOR THE BOARD. THAT POSITION WAS STATED IN CAMDEN (MARQUIS) V. I.R.C. [1914] 1 K.B. 641 (C. A.) COZENS-HARDY M.R. SAID AT P. 647:

> "...BUT WE ARE ASKED TO SAY THAT THE COURT OUGHT TO TAKE EVIDENCE AS TO WHETHER IN DEALING WITH THIS PARTICULAR PROPERTY THERE IS SOME SPECIAL AND PECULIAR ACCEPTED MEANING OF THESE WORDS "NOMINAL RENT." NO CASE HAS BEEN CALLED TO OUR ATTENTION, AND I DO NOT BELIEVE THERE IS ANY CASE, IN WHICH, DEALING WITH A MODERN STATUTE, ANY SUCH EVIDENCE HAS EVER BEEN ADMITTED. THE DUTY OF THIS COURT IS TO INTERPRET AND GIVE FULL EFFECT TO THE WORDS USED BY THE LEGISLATURE, AND IT SEEMS TO ME REALY NOT RELEVANT TO CONSIDER WHAT A PARTICULAR BRANCH OF THE PUBLIC MAY OR MAY NOT UNDERSTAND TO BE THE MEANING OF THOSE WORDS. IT IS FOR THE COURT TO INTERPRET THE STATUTE AS BEST THEY CAN. IN SO DOING THE COURT MAY NO DOUBT ASSIST THEMSELVES IN THE DISCHARGE OF THEIR DUTY BY ANY LITERARY HELP WHICH THEY CAN FIND, INCLUDING OF COURSE THE CONSULTATION OF STANDARD AUTHORS AND REFERENCE TO WELL-KNOWN AND AUTHORITATIVE DICTIONARIES, WHICH REFER TO THE SOURCES IN WHICH THE INTERPRETATION WHICH THEY GIVE TO THE WORDS OF THE ENGLISH LANGUAGE IS TO BE FOUND. BUT TO SAY WE OUGHT TO ALLOW EVIDENCE TO BE GIVEN AS TO WHETHER THERE IS ANY SUCH TECHNICAL MEANING, TO BE FOLLOWED UP, OF COURSE, BY EVIDENCE AS TO WHAT THAT SPECIAL MEANING IS, WOULD I THINK BE GOING ENTIRELY CONTRARY TO THAT WHICH SEEMS TO BE THE SETTLED RULE OF INTERPRETATION..."

WE FURTHER STATED AT P. 649:

> "...I THINK IT WOULD BE ALTOGETHER CONTRARY TO PRINCIPLE AND OF THE WORST EXAMPLE IF WE WERE TO ALLOW THIS PRESENT APPLICATION TO SUCCEED, BY ALLOWING EVIDENCE TO BE GIVEN AS TO THE MEANING WHICH A CERTAIN BRANCH OF THE COMMUNITY ATTACHES TO THESE PARTICULAR WORDS "NOMINAL RENT."

THE VIEW EXPRESSED BY THE ENGLISH COURT OF APPEAL HAS BEEN FOLLOWED AND APPROVED IN THIS JURISDICTION. SEE RE MCINTYRE PORCUPINE MINES LIMITED AND MORGAN (1921) 49 O.L.R. 214 (C.A.).

7. Even if the testimony of these expert witnesses was admissible it is doubtful that we would give weight to their opinions. It has often been stated that words take colour from their surroundings and therefore it is our view that definitions in The Labour Relations Act should be considered within the framework of collective bargaining. The views of the expert witnesses in this case are founded on their own special interpretation of horticulture based on a non-collective bargaining point of view. However, in view of our findings we need not explore this approach any further.

8. For the reasons given we are not prepared in the circumstances of this case to amplify or extend the definition of horticulture as set forth in the McLean-Peister Limited Case.

9. It is therefore necessary to assess the evidence in the light of the definition in the McLean-Peister Limited Case. We are of the opinion that the respondent's business does not fall within that definition. Horticulture as the Board has defined it concerns itself primarily with the ground or land. "Tilling and preparing" are obviously concerned with the ground or land. A definition of cultivating found in the Oxford Universal Dictionary is "to bestow labour and attention upon land in order to the raising of crops; to till"; another definition in Webster's Seventh New Collegiate Dictionary is "to loosen or break up the soil about growing plants". We are satisfied therefore that the definition of horticulture is directed to the work on land or ground as distinguished from trees.

10. The definition is also borne out by the facts of the McLean-Peister Limited Case. The company in that case was concerned with seeding or sodding lawns. It cultivated, fertilized, seeded, irrigated and mowed its own turf farm; on occasion it purchased sod rights and then prepared the fields by mowing, spraying and fertilizing before removing the sod. The company sodding operation involved it in the laying of sod and the continued watering, fertilizing and mowing. These operations continued for a guaranteed period if necessary. It is clear therefore that the facts in the McLean-Peister Limited Case indicated that the company's activities were primarily directed to working on the land or ground.

11. In addition we are of the opinion that growth is a major factor in considering the definition of horticulture. The activity of horticulture is concerned with growth; the labour and attention of horticulture are directed to the eventual purpose of promoting and fostering growth. In the McLean-Peister Limited Case the company was concerned with the growth of sod on its own

TURF FARM, THE GROWTH OF SOD ON SITES WHERE SOD RIGHTS HAD BEEN PURCHASED AND THE GROWTH OF SOD ON PROJECTS WHERE THE COMPANY HAD SUPPLIED SOD. THE WORK IN THAT CASE DID NOT INVOLVE THE OCCASIONAL OR INCIDENTAL ATTENDANCES AT THE PROPERTIES OF PRIVATE OWNERS FOR CARE AND TREATMENT.

12. IN THIS CASE HOWEVER THE COMPANY IS INVOLVED IN TREATMENT OR CARE. THE RESULT OF THE COMPANY'S WORK MAY RESULT IN IMPROVED GROWTH BUT THAT IS INCIDENTAL TO THE MAIN PURPOSE WHICH IS THE TREATMENT OF TREES. THAT ACTIVITY IS NOT PRIMARILY CONCERNED WITH GROWTH - GROWTH IS ONLY ONE OF THE FACTORS TO BE CONSIDERED. THIS CAN MORE READILY BE SEEN BY EXAMINING SOME OF THE COMPANY'S FUNCTIONS. FOR EXAMPLE, THE REMOVAL OF DEAD TREES AND STUMPS OR THE PRUNING OF TREES FOR THE PURPOSE OF CLEANING THE HYDRO LINES ARE NOT PRIMARILY CONCERNED WITH GROWTH. THEY ARE JUST SIMPLE CARE OR TREATMENT.

13. IN CONCLUSION, WE HOLD THAT THE CARE OR TREATMENT OF TREES DOES NOT CONSTITUTE HORTICULTURE. WE HOLD THAT ACTIVITY NOT PRIMARILY DIRECTED TOWARDS GROWTH DOES NOT CONSTITUTE HORTICULTURE WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

14. THE BOARD FINDS HAVING REGARD TO THE AGREEMENT OF THE PARTIES THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

. . .

16. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: FEBRUARY 10, 1970

I DISSENT.

THE SUBMISSION OF THE RESPONDENT COMPANY IS THAT BY VIRTUE OF SECTION 2 OF THE LABOUR RELATIONS ACT, THIS BOARD DOES NOT HAVE JURISDICTION TO GRANT CERTIFICATION FOR THE EMPLOYEES SOUGHT BY THIS APPLICATION.

SECTION 2(c) OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:

"THIS ACT DOES NOT APPLY, ...

(c) TO A PERSON, OTHER THAN AN EMPLOYEE OF A MUNICIPALITY OR A PERSON EMPLOYED IN SILVACULTURE, WHO IS EMPLOYED IN HORTICULTURE BY AN EMPLOYER WHOSE PRIMARY BUSINESS IS AGRICULTURE OR HORTICULTURE;.....

WHILE THE JURISPRUDENCE OF THIS BOARD REGARDING THIS PARTICULAR SUBSECTION OF SECTION 2 OF THE ACT IS MINIMAL, IT WOULD APPEAR THAT IT HAS BEEN SETTLED BY THE BOARD THAT WHILE THE EMPLOYEES SOUGHT BY THE APPLICANT IN A BARGAINING UNIT MAY ONLY BE LABOURERS, THEY WOULD STILL BE EXCLUDED FROM THE BOARD'S JURISDICTION IF THEY WERE ENGAGED IN HORTICULTURE OR AGRICULTURE AND THE PRIMARY BUSINESS OF THE EMPLOYER WAS HORTICULTURE OR AGRICULTURE.

SEE INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 AND MCLEAN - PEISTER LIMITED (1960-64), VOL. 2 CCH LABOUR LAW REPORTER, P. 16,272.

THUS THE DEGREE OF EXPERTISE EXHIBITED BY THE PERSONS SOUGHT IN THE CERTIFICATION PROCEEDINGS WOULD SEEM TO BE INSIGNIFICANT IN APPLYING S.2(c), SO LONG AS THE PRIMARY BUSINESS OF THE EMPLOYER IS AGRICULTURE OR HORTICULTURE AND THE EMPLOYEES SOUGHT WERE ENGAGED IN SUCH PRIMARY BUSINESS.

IN THE INSTANT CASE, THERE BEING NO EVIDENCE CALLED BY THE APPLICANT UNION, THE EVIDENCE OF THE WORK PERFORMED BY THE COMPANY IS UNCONTRADICTED. IT WAS TO THE AFFECT THAT THE COMPANY WAS ENGAGED IN INSPECTING TREES TO BE WORKED ON, DIAGNOSING PROBLEMS CONCERNING SUCH TREES, PLANNING TREATMENT, MAKING WORK RECOMMENDATIONS, PRUNING, SPRAYING, CABLING AND BRACING, CAVITY TREATMENT OF TREES, FEEDING AND FERTILIZATION, AERATION, WOUND TREATMENT, TREE AND STUMP REMOVAL AND LIGHTNING PROTECTION.

THE COMPANY'S WORK IS PERFORMED ON INDIVIDUAL ORNAMENTAL TREES ON PRIVATE PROPERTIES OR ESTATES, AND THE COMPANY APPLIES HORTICULTURAL AND PRACTICAL BACKGROUND TO PRESERVE OR MAINTAIN ORNAMENTAL TREES.

IN ADDITION TO THE EVIDENCE GIVEN BY THE COMPANY EMPLOYEE, THE RESPONDENT ALSO CALLED EVIDENCE OF TWO PERSONS EMINENTLY QUALIFIED IN THE FIELD OF HORTICULTURE.

NORMAN J. SCOTT, B.S.A., M.SC., P. AG., A GRADUATE OF ONTARIO AGRICULTURAL COLLEGE, UNIVERSITY OF TORONTO, AND OHIO STATE UNIVERSITY, HAVING SPECIALIZED IN ORNAMENTAL HORTICULTURE,

LANDSCAPE DESIGN, FLORICULTURE, NURSERY MANAGEMENT AND ARBORICULTURE WAS THE FIRST EXPERT WITNESS CALLED BY THE RESPONDENT. THE PRESIDENT OF CANADIAN HORTICULTURAL CONSULTING COMPANY LIMITED, THIS WITNESS HAD NUMEROUS PROFESSIONAL AND TRADE AFFILIATIONS, WAS AN AUTHOR IN HIS FIELD, AND HAD GIVEN EXPERT TESTIMONY BEFORE VARIOUS COURTS AND TRIBUNALS. THIS WITNESS HAD HEARD THE EVIDENCE OF THE WITNESS CALLED BY THE COMPANY AND ON THE BASIS OF THE WORK PERFORMED BY THAT COMPANY, STATED CATEGORICALLY THAT THE RESPONDENT COMPANY WAS ENGAGED IN HORTICULTURE. HE PRODUCED A CHART WHICH HE TESTIFIED WAS ACCEPTED AND IN USE IN UNIVERSITIES THROUGHOUT NORTH AMERICA INDICATING THAT HORTICULTURE COULD BE BROKEN DOWN INTO FRUIT AND VEGETABLE HORTICULTURE, AND ORNAMENTAL HORTICULTURE.

ORNAMENTAL HORTICULTURE COULD THEN BE BROKEN DOWN INTO NURSERY MANAGEMENT, TURF AND GRASSES, FLORICULTURE AND ARBORICULTURE. HIS EVIDENCE WAS THAT THE RESPONDENT COMPANY WAS ENGAGED IN THE HORTICULTURAL SPECIALTY OF ARBORICULTURE.

THE SECOND EXPERT WITNESS CALLED BY THE RESPONDENT COMPANY WAS PROFESSOR ERIK JORGENSEN, A PROFESSOR AT THE UNIVERSITY OF TORONTO IN THE DEPARTMENT OF FORESTY, LECTURING GRADUATE AND UNDERGRADUATE STUDENTS, A MAN WITH NUMEROUS PROFESSIONAL AFFILIATIONS, AND AN AUTHOR OF SOME 50 PUBLICATIONS ON FOREST TREE DISEASES AND OTHER FORESTRY PROBLEMS. HE, TOO, HAD HEARD THE TESTIMONY OF THE COMPANY AS TO THE BUSINESS IT PERFORMED, AND STATED THAT THE COMPANY WAS ENGAGED IN THE FIELD OF HORTICULTURE AND NOT IN THE FIELD OF SILVICULTURE.

I NOW WISH TO DEAL WITH THAT PORTION OF THE MAJORITY DECISION WHICH SUGGESTS THAT THE TESTIMONY OF THE EXPERT WITNESSES IS INADMISSABLE. WHILE I AM IN AGREEMENT THAT THE INTERPRETATION OF THE STATURE IS A MATTER FOR THE BOARD, I AM AT VARIANCE WITH THE MAJORITY IN THEIR FINDING THAT IN THE TESTIMONY OF THE TWO EXPERT WITNESSES, THERE WAS AN ATTEMPT TO INTERPRET THE STATUTE.

IF THE QUESTION HAD BEEN ASKED OF THESE EXPERTS AS TO WHAT WAS THE MEANING OF SECTION 2(c) OF THE LABOUR RELATIONS ACT, I WOULD CLEARLY FIND THAT THE ANSWER TO SUCH A QUESTION WAS INADMISSABLE. HOWEVER, WHEN THESE EXPERTS ARE MERELY GIVING EVIDENCE FROM THEIR EXPERIENCE AS TO WHAT IS THE COMMON AND ACCURATE MEANING OF WORDS IN THE ENGLISH LANGUAGE, THEN I AM OF THE OPINION THAT SUCH EVIDENCE IS ADMISSABLE. INDEED, THE PASSAGE QUOTED BY THE MAJORITY FROM Camden (Marquis) v. I.R.C. [1947] I.K.B. 641 WOULD SUGGEST THAT THIS IS SO.

AT PAGE 647, COZENS-HARDY M.R. SAID:

> "IT IS FOR THE COURT TO INTERPRET THE STATUTE AS BEST THEY CAN. IN DOING SO THE COURT MAY NO DOUBT ASSIST THEMSELVES IN THE DISCHARGE OF THEIR DUTY BY ANY LITERARY HELP WHICH THEY CAN FIND, INCLUDING OF COURSE THE CONSULTATION OF STANDARD AUTHORS AND REFERENCE TO WELL-KNOWN AND AUTHORITATIVE DICTIONARIES, WHICH REFER TO THE SOURCES IN WHICH THE INTERPRETATION WHICH THEY GIVE TO THE WORDS OF THE ENGLISH LANGUAGE IS TO BE FOUND".

THAT BEING SO, I WOULD FIND IT DIFFICULT TO TAKE COGNIZANCE OF THE LITERARY WORKS OF THE TWO EXPERTS CALLED, IN ORDER TO REACH A CONCLUSION AS TO THE MEANING OF THE WORDS IN SECTION 2(c) OF THE ACT, BUT REJECT THEIR SPOKEN WORDS FROM THE WITNESS BOX, EVEN THOUGH THE PERSONS UTTERING SUCH SPOKEN WORDS WERE SUBJECT TO CROSS-EXAMINATION.

SIMILARLY, I WOULD FIND THAT IT IS DIFFICULT TO REJECT THE TESTIMONY OF EXPERT WITNESSES WHEN THESE WITNESSES ARE DEFINING FOR THEIR STUDENTS IN CLASS THE MEANING OF WORDS SUCH AS "HORTICULTURE" AND "SILVICULTURE".

IN PARAGRAPH 8 OF THE MAJORITY DECISION, IT IS STATED THAT THEY ARE NOT PREPARED TO AMPLIFY OR EXTEND THE DEFINITION OF THE BOARD OF "HORTICULTURE" IN THE McLEAN-PEISTER LIMITED CASE, SUPRA. WITH GREAT RESPECT TO MY COLLEAGUES, IT IS MY OPINION THAT THE DEFINITION IN THE McLEAN-PEISTER LIMITED CASE MAY AND SHOULD BE AMPLIFIED OR EXTENDED IN THIS PARTICULAR CASE.

IT WOULD SEEM FROM THE MAJORITY DECISION THAT THIS PANEL OF THE BOARD IS CONFINING THE DEFINITION WHICH IT GIVES TO THE WORDS OF SECTION 2(c) TO THOSE DEFINITIONS SET OUT IN THE McLEAN-PEISTER CASE, AND TREATING SUCH DEFINITIONS AS BEING ALL EMBRASIVE WHEN CONSIDERING THE SECTION. THE DEFINITIONS IN THAT CASE WERE TAKEN FROM WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY AND THE CONCISE OXFORD DICTIONARY.

COZENS-HARDY M.R. IN CAMDEN (MARQUIS) V. I.R.C. SUPRA, STATED THAT ASSISTANCE MAY BE OBTAINED TO "WELL-KNOWN AND AUTHORITATIVE DICTIONARIES".

INDEED, IN SUBSEQUENT DECISIONS OF THIS BOARD, ADDITIONAL AUTHORITATIVE DICTIONARIES HAVE BEEN USED IN DEFINING THE VARIOUS WORDS OF THE SECTION. THUS IN UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS A.F.L.-CIO-CLC AND ONTARIO TREE FRUITS COOPERATIVE LIMITED, 62 CLLC 1044, CLS 76-858, THE BOARD USED THE OXFORD DICTIONARY, BLACKIES' LARGE-TYPE DICTIONARY, AND WEBSTER'S TWENTIETH CENTURY DICTIONARY. IN SPRUCE FALLS POWER AND PAPER COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1963, P. 327, THE BOARD USED THE SHORTER OXFORD ENGLISH DICTIONARY AND THE DICTIONARY OF OCCUPATIONAL TITLES, VOL. 1, 2ND ED., PREPARED BY THE DIVISION OF OCCUPATIONAL ANALYSIS, UNITED STATES EMPLOYMENT SERVICE IN OBTAINING A DEFINITION OF "SILVICULTURE" (WHICH, OF COURSE, IS CONTAINED IN THE SAME SUBSECTION OF THE ACT), AND ALSO IN OBTAINING THE DEFINITION OF "SILVICULTURIST".

ACCORDINGLY, IN APPLYING THE DICTIONARY OF OCCUPATIONAL TITLES WHICH WAS APPROVED BY THE BOARD AS AN AUTHORITY FOR DEFINING VARIOUS OF THE WORDS UNDER SECTION 2(c) OF THE LABOUR RELATIONS ACT, ONE FINDS THE MEANING OF "HORTICULTURIST" TO BE:

> "HORTICULTURIST" CONDUCTS EXPERIMENTS AND INVESTIGATIONS ON PROBLEMS OF BREEDING, PRODUCTION, STORAGE, PROCESSING, AND TRANSIT OF FRUITS, NUTS, BERRIES, VEGETABLES, FLOWERS, BUSHES, AND TREES. EXPERIMENTS TO DEVELOP NEW OR IMPROVED VARIETIES HAVING HIGHER YIELD, QUALITY, NUTRITIONAL VALUE, RESISTANCE TO DISEASE, OR ADAPTABILITY TO CLIMATES, SOILS, USES, OR PROCESSES. DETERMINES BEST METHODS OF PLANTING, SPRAYING, CULTIVATING, AND HARVESTING. MAY BE DESIGNATED ACCORDING TO SPECIALTY AS RESEARCH HORTICULTURIST, BREEDING: RESEARCH HORTICULTURIST, PRODUCTION"

SIMILARLY, FROM THE SAME AUTHORITY, "ORNAMENTAL HORTICULTURIST" IS DEFINED AS FOLLOWS:

> "ORNAMENTAL HORTICULTURIST CONDUCTS EXPERIMENTS AND INVESTIGATIONS ON METHODS OF IMPROVEMENT IN QUALITY AND PRODUCTION OF ORNAMENTAL PLANTS, SUCH AS FLOWERING BULBS, HERBACEOUS ANNUALS AND PERENNIALS, WOODY FLOWER-BEARING SHRUBS AND TREES, CACTI, AQUATIC PLANTS, VINES, SHRUBS, AND TREES; SEEKS SUCH RESULTS AS IMPROVED COLOR OR SHAPE, INCREASE IN NUMBER OF BLOOMS, RESISTANCE TO DISEASE, AND ADAPTABLILITY

TO CONDITIONS OF SHIPPING AND STORING. MAY SPECIALIZE IN FLOWER CULTURE AND BE DESIGNATED AS FLORICULTURIST; OR IN CULTURE AND ARTISTIC PLANTING AND TRIMMING TREES AND BE DESIGNATED AS ARBORICULTURIST."

COMPARE THIS MEANING WITH THAT GAINED FROM THE CHART INTRODUCED BY THE EXPERT WITNESS NORMAN SCOTT, AND ONE FINDS THE FOREGOING DEFINITIONS ARE CORROBORATIVE OF THE EVIDENCE SUBMITTED BY HIM.

SIMILARLY, IN THE SHORTER OXFORD ENGLISH DICTIONARY "ARBORICULTURE" IS DEFINED AS "THE CULTIVATION OF TREES AND SHRUBS FOR USE AND ORNAMENT."

IN FUNK & WAGNALLS NEW STANDARD DICTIONARY OF THE ENGLISH LANGUAGE, CERTAIN DEFINITIONS ARE MATERIAL TO THE PROBLEM BEFORE US.

HORTICULTURE - "THAT DEPARTMENT OF THE SCIENCE OF AGRICULTURE WHICH RELATES TO THE CULTIVATION OF GARDENS OR ORCHARDS, INCLUDING THE GROWING OF VEGETABLES, FRUITS, FLOWERS, AND ORNAMENTAL SHRUBS AND TREES.

ARBORICULTURE - THE CULTIVATION OF TREES OR SHRUBS.

GROW - TO CAUSE TO SPRING UP AND MATURE."

MY COLLEAGUES IN THE MAJORITY DECISION FIND THAT THE CARE OR TREATMENT OF TREES DOES NOT CONSTITUTE HORTICULTURE, AND FIND FURTHER THAT ACTIVITY NOT PRIMARILY DIRECTED TOWARDS GROWTH, DOES NOT CONSTITUTE HORTICULTURE WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

FROM THE DEFINITIONS HEREINBEFORE SET FORTH, ESPECIALLY THOSE TAKEN FROM THE DICTIONARY OF OCCUPATIONAL TITLES, I WOULD FIND THAT THE FUNCTIONS PERFORMED BY THE RESPONDENT SUCH AS PRUNING, SPRAYING, CABLING AND BRACING, FEEDING, FERTILIZATION, AND AERATION, WHILE NOT NECESSARILY DIRECTED TOWARDS GROWTH, ARE STILL AN INTEGRAL PART OF THE BUSINESS OF HORTICULTURE.

ACCORDINGLY, FOR THE REASONS HEREIN SET OUT, I WOULD HAVE DISMISSED THE APPLICATION.

16304-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. J. MCLEOD AND SONS LIMITED (RESPONDENT) v. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 508 (INTERVENER #1) v. LOCAL UNION No. 1687 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (INTERVENER #2) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 (INTERVENER #3) v. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 504 (INTERVENER #4).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: W. BINNIE AND G. VANDEZANDE FOR THE APPLICANT; J. KELLEHER FOR THE RESPONDENT; L. ARNOLD AND W. MAHAR FOR INTERVENER #1; NO ONE APPEARING FOR INTERVENER #2; NO ONE APPEARING FOR INTERVENER #3; AND NO ONE APPEARING FOR INTERVENER #4.

DECISION OF THE BOARD: FEBRUARY 20, 1970.

1. IN A DECISION DATED DECEMBER 10, 1969 THE BOARD ORDERED A REPRESENTATION VOTE AMONG THE EMPLOYEES IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 7 OF THAT DECISION. IN CONNECTION WITH THE VOTE THE BOARD WENT ON TO PROVIDE THAT:

> ...ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATEHEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

2. INTERVENER #1 CHALLENGED THE ELIGIBILITY TO VOTE OF TWO EMPLOYEES, NAMELY, D. M. MCLEOD AND A. POZZEBON. THE CHALLENGE TO MCLEOD'S ELIGIBILITY WAS ON THE BASIS, INTER ALIA, THAT HE WAS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. MCLEOD IS AN APPRENTICE PLUMBER AND THE SON OF ONE, D. A. MCLEOD, WHO HIRED HIM AND WHO IS HIS BOSS. THE SON SAID HE DID NOT KNOW HIS FATHER'S TITLE, BUT HE "KNOWS HE RUNS THE SHOP". D. A. MCLEOD WAS DESCRIBED BY COUNSEL FOR INTERVENER #1 AS "ONE OF THE OWNERS" OF THE RESPONDENT. IT WAS CONCEDED BY THE SAID COUNSEL THAT, APART FROM THE FATHER-SON RELATIONSHIP, THERE WAS NO OTHER EVIDENCE FROM WHICH IT COULD BE INFERRED THAT THE SON, D. M. MCLEOD, WAS EMPLOYED IN A CONFIDENTIAL CAPACITY. HAVING CAREFULLY CONSIDERED THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, D. M. MCLEOD WAS NOT, IN OUR OPINION, EMPLOYED AT THE RELEVANT TIMES IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS.

3. D. M. MCLEOD'S ELIGIBILITY TO VOTE WAS ALSO CHALLENGED, AS WAS THAT OF POZZEBON, ON ANOTHER GROUND, NAMELY THAT THEY WERE NOT EMPLOYEES IN THE BARGAINING UNIT REFERRED TO ABOVE ON THE DATE OF THE MAKING OF THE APPLICATION, NAMELY, JUNE 16, 1969 ALTHOUGH THEY

WERE EMPLOYEES ON THE ELIGIBILITY DATE DETERMINED BY THE BOARD, THAT IS, DECEMBER 10, 1969, THE DATE ON WHICH THE REPRESENTATION VOTE WAS ORDERED. THE INTERVENER CONTENDS THAT THE BOARD HAS NO AUTHORITY UNDER THE LABOUR RELATIONS ACT TO SET SUCH A DATE.

4. SECTION 7 OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:

> 7.-(1) UPON AN APPLICATION FOR CERTIFICATION, THE BOARD SHALL ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE AND THE NUMBER OF EMPLOYEES IN THE UNIT WHO WERE MEMBERS OF THE TRADE UNION AT SUCH TIME AS IS DETERMINED UNDER CLAUSE (J) OF SUBSECTION 2 OF SECTION 77.
>
> (2) IF THE BOARD IS SATISFIED THAT NOT LESS THAN 45 PER CENT AND NO MORE THAN 55 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION, THE BOARD SHALL, AND IF THE BOARD IS SATISFIED THAT MORE THAN 55 PER CENT OF SUCH EMPLOYEES ARE MEMBERS OF THE TRADE UNION, THE BOARD MAY DIRECT THAT A REPRESENTATION VOTE BE TAKEN.
>
> (3) IF ON THE TAKING OF A REPRESENTAION VOTE MORE THAN 50 PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE ARE CAST IN FAVOUR OF THE TRADE UNION, AND IN OTHER CASES, IF THE BOARD IS SATISFIED THAT MORE THAN 55 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION, THE BOARD SHALL CERTIFY THE TRADE UNION AS THE BARGAINING AGENT OF THE EMPLOYEES IN THE BARGAINING UNIT.
>
> (4) IN DETERMINING THE NUMBER OF ELIGIBLE VOTERS FOR THE PURPOSE OF SUBSECTION 3, EMPLOYEES WHO ARE ABSENT FROM WORK DURING VOTING HOURS AND WHO DO NOT CAST THEIR BALLOTS SHALL NOT BE COUNTED AS ELIGIBLE.
>
> (5) IF THE BOARD IS SATISFIED THAT MORE THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION AND THAT THE TRUE WISHES OF THE EMPLOYEES ARE NOT LIKELY TO BE DISCLOSED BY A REPRESENTATION VOTE, THE BOARD MAY CERTIFY THE TRADE UNION AS BARGAINING AGENT WITHOUT TAKING A REPRESENTATION VOTE.

SECTION 7(1) REQUIRES THE BOARD TO ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE. APART FROM SECTION 7(4) THE WORDS "THOSE ELIGIBLE TO VOTE" IN SUBSECTION 3 ARE NOT DEFINED IN THE ACT. INTERVENER #1 ARGUES THAT, IN THE ABSENCE OF ANY SPECIFIC STATUTORY DIRECTIVE WITH RESPECT TO THE TIME OF ELIGIBILITY, THE DATE OF THE MAKING OF THE APPLICATION IS THE ONLY PERTINENT DATE FOR DETERMINING THOSE ELIGIBLE TO VOTE.

5. INTERVENER #1 SUBMITS FURTHER THAT IF ANY DATE OTHER THAN THE DATE OF THE APPLICATION IS CHOSEN, THEN AT LEAST WITH RESPECT TO EMPLOYEES WHO WERE WORKING FOR THE COMPANY ON THE DATE OF THE APPLICATION, THE BOARD'S EARLIER DECISION IN THIS MATTER WITH RESPECT TO WHO WERE EMPLOYEES ON THE DATE OF THE MAKING OF THE APPLICATION "COULD BE RENDERED NUGATORY BY THE COMPANY REPLACING THOSE EMPLOYEES WITH NEW EMPLOYEES WHOSE STATUS COULD AGAIN BE OPEN TO QUESTION AS ON THE ORIGINAL APPLICATION". WITHOUT DECIDING WHETHER THIS IS A MATTER WHICH THE BOARD WOULD BE ENTITLED TO TAKE INTO ACCOUNT IN DECIDING THE ISSUE PRESENTLY BEFORE US, WE WOULD POINT OUT THAT IF SUCH ACTION WERE TAKEN BY AN EMPLOYER, IT MIGHT WELL BE THE SUBJECT OF A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. FURTHER, IF, AS CONTENDED BY INTERVENER #1, THE ELIGIBILITY TO VOTE DATE IS THE DATE OF THE MAKING OF THE APPLICATION, THEN EMPLOYEES HIRED SUBSEQUENT TO THAT DATE WOULD BE DISENFRANCHISED DESPITE THE FACT THAT THERE MAY WELL BE A CONSIDERABLE TURN-OVER IN THE WORK FORCE BETWEEN THE DATE OF MAKING OF THE APPLICATION AND THE DATE OF THE TAKING OF THE REPRESENTATION VOTE. FURTHER, IF THE ELIGIBILITY DATE IS SET AS OF THE DATE THE VOTE IS DIRECTED, THIS DATE IS UNKNOWN TO THE PARTIES AND THEREFORE ACTS AS A RESTRAINT ON PERSONS WHO MAY SEEK TO MANOEUVRE THE WORK FORCE WITH A VIEW TO IMPROVING THEIR POSITION BEFORE THE VOTE IS TAKEN. FINALLY, IT WOULD MEAN THAT THE BOARD WOULD BE UNABLE IN ANY GIVEN CASE TO POSTPONE THE TAKING OF A REPRESENTATION VOTE SO THAT A REPRESENTATIVE SEGMENT OF THE WORK FORCE IS ABLE TO PARTICIPATE IN THE VOTE IN CASES WHERE AN EMPLOYER HAS A PLANNED EXPANSION OF THE WORK FORCE. IN OTHER WORDS, THE BUILD-UP PRINCIPLE REFERRED TO IN SECTION 92(2) OF THE LABOUR RELATIONS ACT WOULD BE RENDERED NULL AND VOID. AT THIS POINT WE STRESS ONCE AGAIN THAT WE ARE NOT DECIDING THAT THESE ARE MATTERS WHICH ARE PROPER TO CONSIDER IN DETERMINING THE ISSUE BEFORE US IN THIS CASE. THEY WOULD ONLY BE MATERIAL IF UNDER THE STATUTE THE BOARD HAS A DISCRETION IN DETERMINING THE ELIGIBILITY DATE.

6. COUNSEL FOR THE APPLICANT AND RESPONDENT TAKE THE POSITION THAT THE STATUTE BEING SILENT ON THE QUESTION OF THE DATE FOR DETERMINING ELIGIBILITY TO VOTE, THE BOARD UNDER THE GENERAL PROVISIONS OF SECTION 79(1) OF THE ACT HAS THE POWER TO SET THAT DATE. THAT SECTION PROVIDES IN PART:

> 79.-(1) THE BOARD HAS EXCLUSIVE JURISDICTION TO EXERCISE THE POWERS CONFERRED UPON IT BY OR UNDER THIS ACT AND TO DETERMINE ALL QUESTIONS OF FACT OR LAW THAT ARISE IN ANY MATTER BEFORE IT...

IN A SENSE, HOWEVER, THIS ARGUMENT APPEARS TO BEG THE QUESTION WHICH IS, DOES THE STATUTE CONFER ON THE BOARD THE POWER TO DETERMINE THE ELIGIBILITY DATE? IF IT DOES, THEN SECTION 79 AND, INDEED, SECTION 77 COME INTO PLAY.

7. COUNSEL ALSO RELY ON SCHENTAG CONSTRUCTION LTD., 65 CLLC PARAGRAPH 14,074, A DECISION OF THE SASKATCHEWAN COURT OF APPEAL. IT APPEARS FROM THE DECISION IN THAT CASE THAT UNDER THE SASKATCHEWAN LABOUR RELATIONS LEGISLATION IN FORCE AT THAT TIME, THE WORDS "EMPLOYEES ENTITLED TO VOTE" WERE NOT DEFINED IN THE STATUTE. THE SASKATCHEWAN LABOUR RELATIONS BOARD DIRECTED A REPRESENTATION VOTE AMONG EMPLOYEES IN THE BARGAINING UNIT AT THE DATE OF THE MAKING OF THE APPLICATION AND WHO WERE STILL EMPLOYED WITHIN THE SAID UNIT AS OF THE DATE OF THE VOTING. IT WAS ARGUED THAT THE ONLY DATE THE BOARD COULD LOOK TO WAS THE DATE OF THE MAKING OF THE APPLICATION AND THAT IT HAD NO JURISDICTION TO DETERMINE THAT "EMPLOYEES ENTITLED TO VOTE" MUST STILL BE EMPLOYED ON THE DATE OF THE VOTING. THE COURT HELD THAT THE WORDS "EMPLOYEES ENTITLED TO VOTE", NOT BEING DEFINED IN THE STATUTE, IT WAS THE DUTY AND WITHIN THE JURISDICTION OF THE BOARD TO DETERMINE THE PERSONS COMING WITHIN THAT CATEGORY. SIMILARLY, IT IS ARGUED, SINCE THE WORDS "THOSE ELIGIBLE TO VOTE" IN SECTION 7(3) OF THE ONTARIO ACT ARE NOT DEFINED, THEN IT IS UP TO THIS BOARD TO DETERMINE THE PERSONS COMING WITHIN THAT CATEGORY. SEE ALSO SMITH-ROLES LTD. ET AL., 69 CLLC, PARAGRAPH 14,225, WHERE MACDONALD J. OF THE SASKATCHEWAN COURT OF QUEEN'S BENCH APPLIES THE SAME PRINCIPLE ALTHOUGH THE MATTER ON WHICH THE SASKATCHEWAN BOARD WAS REQUIRED TO MAKE A DETERMINATION IN THAT CASE WAS DIFFERENT FROM THE ONE AT ISSUE IN THIS CASE.

8. IT APPEARS TO US, THEREFORE, THAT THE QUESTION BEFORE US IS WHETHER THE ONTARIO LABOUR RELATIONS ACT DOES OR DOES NOT DEFINE THE ELIGIBILITY DATE FOR PURPOSE OF A REPRESENTATION VOTE. SECTION 7(1) REFERS TO TWO DATES DESCRIBED BY KELLY J.A. IN REGINA V. ONTARIO LABOUR RELATIONS BOARD EX PARTE HANNIGAN ET AL., 67 CLLC PARAGRAPH 14,039, AS THE "UNIT DATE" AND THE "MEMBER DATE". ON READING THE SECTION AS A WHOLE IT IS CLEAR THAT THE PURPOSE OF THESE TWO DATES IS TO ENABLE THE BOARD TO DETERMINE CERTAIN PERCENTAGES WHICH, IN TURN, DETERMINE WHETHER AN APPLICANT FOR CERTIFICATION IS ENTITLED TO A REPRESENTATION VOTE OR TO BE CERTIFIED OUTRIGHT OR WHETHER THE APPLICATION SHOULD BE DISMISSED BECAUSE THE APPLICANT DOES NOT HAVE THE REQUIRED PERCENTAGE. THE DETERMINATION IS ALSO MATERIAL FOR THE PURPOSES OF SECTION 7(5). THERE DOES NOT APPEAR TO

BE ANYTHING IN SECTION 7(1) TO SUGGEST THAT EITHER OF THE DATES REFERRED TO THEREIN WAS INTENDED TO BE USED FOR THE PURPOSE OF DETERMINING WHO IS ELIGIBLE TO VOTE IN A REPRESENTATION VOTE. SECTION 7(2) AUTHORIZES THE BOARD TO DIRECT THAT A REPRESENTATION VOTE BE TAKEN IF IT IS SATISFIED AS TO CERTAIN PERCENTAGES. IT SEEMS TO US SIGNIFICANT THAT THIS SUBSECTION IS ALSO SILENT ON THE QUESTION OF ELIGIBILITY, PARTICULARLY IN VIEW OF THE FACT THAT SUBSECTION 1 IS MOST SPECIFIC ON THE QUESTION OF DATES. SEE, ON A SOMEWHAT ANALAGOUS SITUATION, BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL No. 468 AND ROTARY PIE SERVICE LTD., (1962) 32 D.L.R. 576, 62 CLLC, PARAGRAPH 15, 418. IN OUR VIEW, IF THE LEGISLATURE HAD INTENDED THE DATE OF APPLICATION TO BE THE ELIGIBILITY DATE, IT WOULD HAVE BEEN A SIMPLE MATTER TO HAVE PROVIDED FOR THIS BY ADDING AFTER "DIRECT THAT A REPRESENTATION VOTE BE TAKEN" IN SUBSECTION 2 SUCH WORDS AS "AMONG THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE". FINALLY, AS WAS NOTED ABOVE, THE WORDS "THOSE ELIGIBLE TO VOTE" APPEAR FOR THE FIRST TIME IN SUBSECTION 3 AND IT IS CLEAR THAT THESE WORDS ARE NOT SPECIFICALLY DEFINED ANYWHERE IN THE STATUTE EXCEPT IN A VERY LIMITED FASHION IN SUBSECTION 4.

9. IN SUM, ON THE BASIS OF OUR ANALYSIS OF SECTION 7, WE ARE NOT PERSUADED THAT IT WAS THE INTENTION OF THE LEGISLATURE TO MAKE THE "UNIT DATE" IN SECTION 7(1) THE DATE FOR DETERMINING "THOSE ELIGIBLE TO VOTE" IN SECTION 7(3). IN THESE CIRCUMSTANCES, IT IS OUR VIEW THAT EXCEPT AS PROVIDED BY SECTION 7(4) IT IS WITHIN THE BOARD'S JURISDICTION TO MAKE THE DETERMINATION. IN THE PRESENT CASE THIS WAS DONE IN OUR DECISION DIRECTING THAT A REPRESENTATION VOTE BE HELD.

10. WE SHOULD PERHAPS ADD THAT SINCE COUNSEL FOR THE APPLICANT AND RESPONDENT DID NOT RELY ON SECTION 77(2)(F) WHICH PROVIDES THAT:

> (2) ...THE BOARD HAS POWER,
>
> (F) TO ENTER UPON THE PREMISES OF EMPLOYERS AND CONDUCT REPRESENTATION VOTES DURING WORKING HOURS AND GIVE SUCH DIRECTIONS IN CONNECTION WITH THE VOTE AS IT DEEMS NECESSARY;

WE HAVE NOT FOUND IT NECESSARY TO CONSIDER WHETHER THE POWER TO "GIVE SUCH DIRECTIONS IN CONNECTION WITH THE VOTE AS IT DEEMS NECESSARY" IS BROAD ENOUGH TO AUTHORIZE THE BOARD TO DETERMINE THE ELIGIBILITY DATE.

11. In the result, the Board finds that D. M. McLeod and A. Pozzebon were eligible voters. The ballot box is to be unsealed and their segregated ballots are to be placed therein. The counting of the votes cast in the representation vote held on January 8, 1970 will then take place in the usual manner.

16305-69-R: Christian Labour Association of Canada (Applicant) v. ALEX'S PLUMBING AND HEATING LIMITED (Respondent) v. Labourers' International Union of North America Local 1036 (Intervener #1) v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 508 (Intervener #2).

BEFORE: G. W. Reed, Q.C., Chairman, and Board Members E. Boyer and R. W. Teagle.

APPEARANCES AT THE HEARING: W. Binnie and G. Vandezande for the applicant; J. Kelleher for the respondent; no one appearing for Intervener #1; L. Arnold and W. Mahar for Intervener #2.

DECISION OF THE BOARD: February 20, 1970.

1. In a decision dated December 10, 1969 the Board ordered a representation vote among the employees in the bargaining unit described in paragraph 5 of that decision. In connection with the vote the Board went on to provide that:

> ...All employees of the respondent in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

Intervener #2 challenged the eligibility to vote of Donald Downey and P. Forget. The challenge to Downey's eligibility was on the basis that he was not an employee on the date the vote was taken, namely, January 8, 1970.

2. The evidence with respect to Downey is contained in a report of the Examiner dated January 9, 1970. Downey was placed on Workmen's Compensation on November 13, 1969 and had not worked since that date. He was released from hospital on December 23rd and at the time of the examination was under a doctor's care. Downey appeared at the polls and was allowed to cast a segregated ballot.

3. Downey is a plumber and steamfitter. His evidence is that he had not terminated his employment with the respondent, he had not asked the respondent for his unemployment insurance book or for his vacation with pay book and that he would return to work for the respondent as soon as he got his release from the doctor and from the Workmen's Compensation Board.

4. The president of the respondent company testified that he had not terminated Downey's employment and that, when the doctor advises Downey that he is fit to return, he would return to work for the respondent. The respondent still has Downey's unemployment insurance book and his vacation with pay book. He was not advised by Downey or anyone else in his company that Downey had terminated his employment.

5. On the basis of the above facts and after considering the representations of the parties, we are satisfied that on the date the vote was taken, namely, January 8, 1970, Donald Downey was an employee of the respondent and eligible to cast a ballot in the representation vote.

6. Intervener #2 challenged P. Forget's eligibility for the same reason that it challenged the eligibility of Pozzebon in the companion case of J. McLeod and Sons Limited. For the reasons given in the decision of even date in that case, we find that P. Forget was an employee on the date the vote was taken and therefore eligible to cast a ballot.

7. In the result, the Board finds that Donald Downey and P. Forget were eligible voters. The ballot box is to be unsealed and their segregated ballots are to be placed therein. The counting of the votes cast in the representation vote held on January 8, 1970 will then take place in the usual manner.

16625-69-R: International Union of District 50, U.M.W.A. (Applicant) v. Gord-Blanche Ltd. carrying on business under the correct name of Hicks Lumber & Wood Products Co. (Respondent).

BEFORE: O. B. Shime, Vice-Chairman and Board Members E. Boyer and R. W. Teagle.

APPEARANCES AT THE HEARING: William Fuller for the applicant; J. B. Noonan for the respondent.

DECISION OF THE BOARD: February 4, 1970.

1. In the Interim Report of the Examiner concerning the employment status of George Reece, the Board is of the opinion that because of the contradictory nature of the evidence it is preferable that viva voce evidence be adduced by the parties on this issue.

2. In addition, the Board conducted an investigation concerning the lack of payment by Mr. Alfred Therien of his membership dues. Mr. Therien advised the Board that no one was present at the time he signed his membership card and made payment. However, it appears that there were persons present and the Board would prefer to hear the evidence of all persons in order to resolve this particular issue.

3. The Registrar is therefore directed to list this matter for hearing in order to enable the Board to hear viva voce evidence concerning the employment status of George Reece and to hear further evidence from those persons present at the time Mr. Therien allegedly signed the membership card.

16628-69-R: Retail Clerks International Association (Applicant) v. CANADA SAFEWAY LIMITED (Respondent) v. Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Intervener).

BEFORE: O. B. Shime, Vice-Chairman and Board Members P. J. O'Keeffe and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: Robert Armstrong, Clifford Evans for the applicant; E. Horembala, V. Pinchin for the respondent; T. E. Armstrong, V. Pathe for the intervener.

DECISION OF O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER P. J. O'KEEFFE: February 23, 1970.

. . .

2. In this case the intervener had made an application for certification with respect to certain of the employees which the applicant also seeks to represent. The Board, pursuant to its decision in this matter dated November 27, 1969, granted the intervener status as a party to these proceedings. Subsequently the intervener requested leave to withdraw its application for certification. Having regard to the time when the request was made the application of the intervener for certifiation is dismissed. The dismissal, however, does not derogate from the intervener's status

AS A PARTY TO THESE PROCEEDINGS WHICH ALLOWED THE INTERVENER TO ADDUCE EVIDENCE AND TO MAKE REPRESENTATIONS AS DETERMINED IN OUR DECISION OF NOVEMBER 27, 1969.

3. THE INTERVENER MADE CERTAIN ALLEGATIONS WITH RESPECT TO THE ORGANIZATIONAL ACTIVITIES OF THE APPLICANT AND FURTHER ALLEGED IN EFFECT THAT THE RESPONDENT ASSISTED AND ENCOURAGED THE APPLICANT'S ORGANIZATIONAL ACTIVITIES. HAVING REGARD TO THE EVIDENCE AND THE SUBMISSIONS OF THE PARTIES, WE ARE OF THE OPINION THAT THE INTERVENER HAS NOT ESTABLISHED CONDUCT ON THE PART OF THE RESPONDENT AND THE APPLICANT WHICH WOULD DISENTITLE THE APPLICANT TO CERTIFICATION .

4. THE INTERVENER FURTHER SUBMITTED THAT THE APPLICATION WAS PREMATURE "HAVING BEEN MADE DURING THE EARLY STAGES OF A PLANNED BUILD-UP [BY THE RESPONDENT] AT A TIME WHEN THE WORK FORCE IN THE STORE WAS NEITHER SUBSTANTIAL NOR REPRESENTATIVE."

5. IT IS COMMON GROUND THAT THE APPLICANT FILED ITS APPLICATION FOR CERTIFICATION ON AUGUST 25, 1969, AND AT THAT TIME THERE WERE APPROXIMATELY 34 PERSONS WHO MIGHT BE INCLUDED IN ANY BARGAINING UNIT WHICH THE BOARD FOUND TO BE APPROPRIATE. WE ARE ALSO SATISFIED THAT THE STORE OPENED ON SEPTEMBER 10, 1969. MR. M. F. GRANTHAM, AN EMPLOYEE OF THE COMPANY, WHO WAS CALLED AS A WITNESS BY THE INTERVENER, TESTIFIED THAT ON SEPTEMBER 10TH THERE WERE "WELL OVER 100 PEOPLE" EMPLOYED AT THE RESPONDENT'S STORE. HE THEN INDICATED THAT THE WORK FORCE SUBSEQUENTLY DECREASED. HOWEVER, NO FIGURES WERE GIVEN AS TO THE EXTENT OF THE DECREASE. MR. PAUL WEISS, WHO WAS CALLED BY THE APPLICANT, DID NOT GIVE ANY EVIDENCE EITHER AFFIRMING OR CONTRADICTING THE EVIDENCE CONCERNING BUILD-UP - HE SIMPLY INDICATED HE WAS NOT SURE HOW MANY PEOPLE WERE ON THE STAFF.

MR. DERRICK MORRISEY, WHO WAS HIRED BY THE APPLICANT IN JUNE, COMMENCED WORK ON APPROXIMATELY AUGUST 8, 1969. HE WAS SENT TO THE WINNIPEG STORE FOR TRAINING FOR TWO WEEKS AND THEN RETURNED TO THE BRAMPTON STORE APPROXIMATELY TUESDAY, SEPTEMBER 2ND 1969. HE TERMINATED HIS EMPLOYMENT ON WEDNESDAY, SEPTEMBER 3RD 1969 AT ABOUT 2 O'CLOCK AND ACCORDINGLY, HIS EVIDENCE ALSO DID NOT AFFIRM OR CONTRADICT THE EVIDENCE CONCERNING BUILD-UP.

6. NEITHER THE APPLICANT NOR THE RESPONDENT CALLED EVIDENCE ON THE ISSUE OF BUILD-UP AND THE APPLICANT AT THE CONCLUSION OF THE EVIDENCE, MOVED FOR A NON-SUIT ON THE BASIS THAT THE INTERVENER HAD NOT ADDUCED SUFFICIENT EVIDENCE TO ESTABLISH A BUILD-UP OF THE WORK FORCE. THE APPLICANT ELECTED TO CALL NO EVIDENCE.

7. HAVING REGARD TO THE PARTICULAR CIRCUMSTANCES OF THIS CASE, INCLUDING THE FACT THAT THIS WAS A NEW STORE WHICH HAD NOT OPENED AT THE TIME OF THE APPLICATION FOR CERTIFICATION, THE NATURE OF THE PARTICULAR BUSINESS AND THE EVIDENCE ADDUCED, WE ARE SATISFIED THAT THE INTERVENER HAS ESTABLISHED THAT THERE HAS BEEN A BUILD-UP IN THE WORK FORCE. IN THESE CIRCUMSTANCES WE ARE OF THE OPINION THAT AT THE TIME THE APPLICATION WAS MADE THERE WAS NOT A SUBSTANTIAL AND REPRESENTATIVE SEGMENT OF THE WORK FORCE EMPLOYED. Emil Frant and Peter Waselovich (CNR Fort Frances, Port Arthur Line) 57 CLLC 1618; CLS 76-539. NOTWITHSTANDING THAT INFORMATION AS TO THE SIZE OF THE WORK FORCE WAS PROVIDED BY THE COMPANY SUBSEQUENT TO THE MOTION FOR NON-SUIT, OUR DECISION IS BASED ON THE EVIDENCE ADDUCED WITHOUT CONSIDERING THE INFORMATION SUPPLIED BY THE COMPANY.

8. THE INFORMATION SUPPLIED BY THE COMPANY SUBSEQUENT TO THE EVIDENCE AND MOTION FOR NON-SUIT, INDICATED THAT THE WORK FORCE MORE THAN DOUBLED SINCE THE APPLICATION. WE ARE SATISFIED FROM THIS INFORMATION SUPPLIED BY THE COMPANY THAT THERE IS A SUBSTANTIAL AND REPRESENTATIVE SEGMENT OF THE WORK FORCE PRESENTLY EMPLOYED. ACCORDINGLY, WE DIRECT A VOTE IN THE FOLLOWING VOTING CONSTITUENCY SUBJECT TO THE CONDITIONS SET FORTH IN PARAGRAPHS 10 AND 11:-

> "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWN OF BRAMPTON SAVE AND EXCEPT ASSISTANT STORE MANAGER, BAKERY MANAGER AND PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER AND BAKERY MANAGER".

9. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY DESCRIBED ABOVE ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

10. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

11. THE INTERVENER ALLEGED THAT THE MEAT MANAGER DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND HE SHOULD BE INCLUDED IN THE BARGAINING UNIT. MR. C. F. ROBICHEAU, EXAMINER, IS THEREFORE APPOINTED TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF THE MEAT DEPARTMENT MANAGER, AND TO REPORT TO THE BOARD FORTHWITH.

12. IN THE EVENT THAT THE VOTE IS TAKEN PRIOR TO ANY DECISION BY THE BOARD AS TO THE DUTIES AND RESPONSIBILITIES OF THE MEAT DEPARTMENT MANAGER, HIS BALLOT SHALL BE SEGREGATED AND THE BALLOT BOX SEALED PENDING A DECISION BY THE BOARD AS TO WHETHER THE MEAT DEPARTMENT MANAGER IS TO BE INCLUDED IN THE BARGAINING UNIT

DISSENT BY BOARD MEMBER J.E.C. ROBINSON, Q.C.: FEBRUARY 23, 1970.

I DISSENT.

THE INTERVENER IN THIS APPLICATION ALLEGED THAT THE APPLICATION BY THE APPLICANT UNION WAS PREMATURE IN THAT IT WAS MADE BY THE APPLICANT DURING THE EARLY STAGE OF A PLANNED BUILD-UP BY THE RESPONDENT COMPANY.

THE INTERVENER CALLED THREE WITNESSES IN AN EFFORT TO ESTABLISH, INTER ALIA, EVIDENCE OF BUILD-UP.

THE FIRST WITNESS CALLED, PAUL WEISS, GAVE EVIDENCE THAT HE WAS EMPLOYED BY THE COMPANY FOR TWO MONTHS STARTING IN THE SECOND TO LAST WEEK IN AUGUST, 1969. HIS EVIDENCE WAS THAT THE FIRST WEEK AFTER HE WAS HIRED, HE WORKED APPROXIMATELY 20 HOURS, THE SECOND WEEK "HARDLY AT ALL". THE NEXT WEEK WHEN THE STORE OPENED, HE WORKED 33 HOURS BUT HIS WORK THEN SLACKENED, AND HE WORKED ONLY ABOUT 12 HOURS PER WEEK THEREAFTER. HE WAS NOT SURE HOW MANY PEOPLE WERE ON THE STAFF IN THE STORE.

THE NEXT WITNESS CALLED BY THE INTERVENER, M. F. GRANTHAM, TESTIFIED THAT AT THE END OF AUGUST HE COULD NOT GUESS THE NUMBER OF EMPLOYEES IN THE STORE. WHILE SOMEWHAT VAGUE AS TO THE NUMBERS OF EMPLOYEES, HE SUGGESTED THAT THERE WERE WELL OVER 100 EMPLOYEES WHEN THE STORE OPENED BUT HE SAID THE WORK FORCE HAD DECREASED SINCE THEN.

THE LAST WITNESS CALLED BY THE INTERVENER, DERRICK MORRISEY, GAVE EVIDENCE THAT HE WAS NOT SURE OF THE NUMBER OF EMPLOYEES IN THE STORE WHILE HE WAS THERE.

ON THE BASIS OF THIS EVIDENCE PROFFERED BY THE INTERVENER, COUNSEL FOR THE APPLICANT MADE A MOTION FOR NON-SUIT ON THE BASIS THAT THE EVIDENCE DID NOT SUBSTANTIATE THE ALLEGATIONS OF BUILD-UP.

THE MAJORITY, BY THIS DECISION, HAS, IN EFFECT DENIED THE MOTION FOR NON-SUIT BY FINDING THAT THE EVIDENCE SUBMITTED BY THE INTERVENER ESTABLISHES BUILD-UP.

WITH THIS POSITION, I AM NOT IN AGREEMENT. IN EMIL FRANT AND PETER WASELOVICH (CNR FORT FRANCES, PORT ARTHUR LINE) CASE 57 CLLC 1618, CLS 76-539 THE BOARD SAID:-

> "... THE BOARD HAS, IN THE PAST, IN SOME CASES, REFUSED TO CERTIFY OR ORDER AN IMMEDIATE VOTE, - AND HAS DIRECTED THAT A VOTE BE TAKEN AT A LATER DATE - WHERE, ON ALL THE EVIDENCE, IT APPEARED TO THE SATISFACTION OF THE BOARD THAT

THE EMPLOYEES DID NOT CONSTITUTE A SUBSTANTIAL AND REPRESENTATIVE SEGMENT OF THE WORK FORCE TO BE EMPLOYED. OF COURSE IN SUCH CASES IT MUST BE ESTABLISHED THAT THERE IS A REAL LIKELIHOOD THAT THE INCREASE IN THE WORK FORCE WILL TAKE PLACE WITHIN A REASONABLE PERIOD OF TIME AND, IF IT APPEARS THAT THE BUILD-UP DEPENDS ON FACTORS BEYOND THE CONTROL OF THE EMPLOYER SUCH AS THE SALEABILITY OF PRODUCTS, THE PRESENCE OF SUFFICIENT WORKERS OR THE AVAILABILITY OF MATERIALS FOR, SAY, THE PURPOSE OF PLANT EXPANSION, THE BOARD, INSTEAD OF DIRECTING A VOTE TO BE HELD IN THE FUTURE, MAY CERTIFY OR ORDER AN IMMEDIATE VOTE DEPENDING ON THE MEMBERSHIP POSITION OF THE APPLICANT".

IN MY OPINION, THE EVIDENCE TENDERED BY THE INTERVENER DID NOT SUBSTANTIATE ITS ALLEGATIONS.

I WOULD, THEREFORE, HAVE ALLOWED THE MOTION FOR NON-SUIT MADE BY THE APPLICANT.

THE RESULT OF MY DECISION WOULD HAVE BEEN, THEREFORE TO CERTIFY THE APPLICANT.

16754-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. BERG MFG (CANADA) LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: LORNE INGLE AND FORTUNATO RAO FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER P. J. O'KEEFFE: FEBRUARY 9, 1970.

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2. THIS IS AN APPLICATION FOR CERTIFICATION.

3. AT THE HEARING OF THE APPLICATION, A QUESTION WAS RAISED WITH RESPECT TO THE ACCURACY OF THE DATES ON MEMBERSHIP CARDS SUBMITTED ON BEHALF OF TWO EMPLOYEES WHOSE NAMES WERE SUPPLIED TO THE BOARD BY THE RESPONDENT. THE BOARD CONDUCTED ITS USUAL INQUIRY AND AS A RESULT DIRECTED THAT A HEARING BE HELD, TO GO INTO THE MATTER OF THE CARD FILED ON BEHALF OF ERANIK KAYTAZ.

4. KAYTAZ'S EVIDENCE IS THAT SHE WAS DISCHARGED BY THE COMPANY ON SEPTEMBER 26, 1969. SHE ATTENDED A MEETING CALLED BY THE UNION AT ITS HALL ON CECIL STREET IN TORONTO, ON SATURDAY, SEPTEMBER 27, 1969. DURING THE COURSE OF THE MEETING, KAYTAZ STATED THAT SHE DID NOT HAVE A CARD. SHE WAS INVITED TO COME FORWARD AND MR. NITSOTOLIS, AN UNPAID UNION ORGANIZER, GAVE HER A CARD WHICH SHE SIGNED INHIS PRESENCE AND RETURNED TO HIM, TOGETHER WITH A $1.00 FEE. NITSOTOLIS DATED THE APPLICATION CARD SEPTEMBER 26, 1969 IN THREE PLACES ON THE CARD AND PUT THE SAME DATE ON THE RECEIPT WHICH HE GAVE TO MRS. KAYTAZ. NITSOTOLIS THEN HANDED THE CARD TO MR. F. RAO, AN OFFICIAL OF THE STEELWORKERS UNION, WHO HAD BEEN SITTING BESIDE HIM DURING THE COURSE OF THE TRANSACTION WITH KAYTAZ. RAO PLACED THE CARD WITH REMAINDER OF THE MEMBERSHIP CARDS WHICH WERE SUBMITTED WITH THE APPLICATION. THERE IS NO DISPUTE AS TO THE FOREGOING FACTS.

5. KAYTAZ TESTIFIED THAT SHE DID NOT NOTICE THE DATE WHICH HAD BEEN INSERTED ON THE CARD. NITSOTOLIS STATED THAT HE HAD PUT SEPTEMBER 26TH ON THE DOCUMENTS IN ERROR. RAO TESTIFIED THAT HE HAD NOT EXAMINED THE CARD TO SEE WHAT DATE IT BORE AND HAD SIMPLY PLACED IT AMONG THE OTHERS AS INDICATED ABOVE.

6. THE BOARD HAS POINTED OUT ON MANY OCCASIONS THAT A VERY HEAVY ONUS RESTS UPON UNIONS TO ENSURE THAT THE EVIDENCE OF MEMBERSHIP SUBMITTED IN SUPPORT OF AN APPLICATION FOR CERTIFICATION IS IN PROPER FORM AND FREE FROM ANY IRREGULARITIES WHICH MIGHT MISLEAD THE BOARD IS ASSESSING WEIGHT TO BE GIVEN TO THE MEMBERSHIP EVIDENCE. IF THE EVIDENCE DISCLOSES A DELIBERATE ATTEMPT TO MISLEAD THE BOARD, THE APPLICATION MAY WELL BE DISMISSED, PARTICULARLY WHERE SOMEBODY IN AN OFFICIAL CAPACITY WITH THE UNION HAS BEEN INVOLVED. IN THE PRESENT CASE, WE ACCEPT NITSOTOLIS'S EVIDENCE THAT THE INCORRECT DATE WAS INSERTED THROUGH INADVERTENCE ON HIS PART AND NOT IN AN ATTEMPT TO MISLEAD THE BOARD.

7. THERE IS, OF COURSE, NO REASON WHY KAYTAZ SHOULD NOT HAVE SIGNED THE CARD NOR WHY THE UNION SHOULD NOT HAVE ACCEPTED IT AT THE TIME IN QUESTION. IF THE CARD HAD BEEN SUBMITTED AS EVIDENCE OF MEMBERSHIP WHILE BEARING THE PROPER DATE, THE BOARD WOULD SIMPLY HAVE REJECTED IT AS NOT BEING RELEVANT EVIDENCE OF MEMBERSHIP IN THIS APPLICATION. THE QUESTION HERE IS WHETHER THE INCORRECT DATE WAS INSERTED AND USED IN AN ATTEMPT TO MISLEAD THE BOARD. AS ALREADY STATED, WE BELIEVE NITSOTOLIS'S EVIDENCE AND WHILE MR. RAO'S CONDUCT IN THE PARTICULAR CIRCUMSTANCES OF THIS INCIDENT MIGHT BE SAID TO HAVE LACKED CARE, WE DO NOT THINK ON THE EVIDENCE THAT IT AMOUNTED TO SUCH GROSS CARELESSNESS AS TO WHETHER THE BOARD WAS OR WAS NOT MISLEAD AS TO AFFECT THE VALIDITY OF THE REMAINDER OF THE MEMBERSHIP EVIDENCE.

8. FORM 8 WAS COMPLETED BY MR. LORNE INGLE, WHO TESTIFIED THAT HE MADE THE NECESSARY INQUIRIES IN ORDER TO ENABLE HIM TO MAKE THE PROPER DECLARATION ON THAT FORM. THE REQUIREMENTS OF FORM 8 DO NOT RAISE THE SPECIFIC QUESTION OF THE DATE ON WHICH THE MEMBERSHIP CARDS WERE COMPLETED. IT DOES REFER TO THE FACT THAT THE CARDS FILED ARE SUBMITTED ON BEHALF OF PERSONS WHO WERE EMPLOYEES OF THE RESPONDENT ON THE DATE OF THE MAKING OF THE APPLICATION. THERE IS NO QUESTION THAT KAYTAZ FULFILLED THE LATTER REQUIREMENT. THERE WAS, OF COURSE, NOTHING ON THE FACE OF THE CARD THAT WOULD CAUSE MR. INGLE TO QUERY ITS AUTHENTICITY AND WE FIND THAT FORM 8 WAS COMPLETED TO THE BEST OF HIS KNOWLEDGE, INFORMATION AND BELIEF AFTER HE HAD MADE DUE INQUIRY.

9. KAYTAZ'S CARD WILL BE DISCOUNTED, BUT SOLELY BECAUSE OF THE DATE OF ITS EXECUTION.

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11. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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13. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: FEBRUARY 9, 1970.

1. I DISSENT FROM THE DECISION OF THE MAJORITY.

2. THE RESPONDENT'S COUNSEL, BOTH BY LETTER AND VERBALLY AT THE INITIAL HEARING ON THE APPLICATION FOR CERTIFICATION ALLEGED THAT IT HAD COME TO HIS CLIENT'S ATTENTION "THAT POSSIBLY SOME MEMBERSHIP APPLICATION CARDS WERE SIGNED BY FORMER EMPLOYEES OF THE RESPONDENT, AFTER THE EMPLOYMENT OF SUCH EMPLOYEES WAS TERMINATED ON SEPTEMBER 26, 1969."

3. IT IS A MATTER OF RECORD THAT AT HEARINGS OF APPLICATIONS FOR CERTIFICATION, THE CHAIRMAN OF THE PANEL INQUIRES OF THE PARTIES AS TO WHETHER OR NOT THERE HAVE BEEN ANY TERMINATIONS BETWEEN THE DATE OF APPLICATION AND THE TERMINAL DATE. TERMINATIONS ARE SIGNIFICANT TO THE BOARD IN THAT ONLY MEMBERSHIP CARDS SUBMITTED ON BEHALF OF PERSONS WHO WERE <u>EMPLOYEES</u> AT THE TIME THE MEMBERSHIP CARDS WERE SIGNED, ARE TO BE COUNTED IN ASCERTAINING THE MEMBERSHIP POSITION OF THE UNION.

4. After conducting an inquiry as a result of the allegations of Counsel for the respondent, and upon examination of the applicant's membership evidence, the Board directed a hearing be held to go into the matter of the card filed on behalf of Eranik Kaytaz.

5. There is little conflict in the evidence heard. Mrs. Kaytaz's membership card was filed in support of the application for certification by the applicant union. Mrs. Kaytaz was discharged by the Company on September 26, 1969. She signed a union card on September 27, 1969 and paid the sum of $1.00 to one 'Nitsotolis', who had been mainly responsible for signing up the other employees who joined the union. Nitsotolis dated her application card September 26, 1969 in three places and dated the receipt for her $1.00 payment as September 26, 1969.

6. While Nitsotolis is an unpaid union organizer, he was delegated the authority by the union to sign up applications. Mr. Rao, a paid official of the Steelworkers Union, experienced both before this Board and in organizing procedures, was present sitting beside Nitsotolis when the latter dated the card on September 27, 1969.

7. Indeed, her card was turned over to Rao, and it was he who put her card amongst the other membership cards which were used in the application for certification. It was Rao, also, of whom inquiries were made, by the person executing the Form 8 which was used in support of thematerial filed with the application for certification. Nitsotolis stated that he had dated the documents in error; Rao testified that hehad not examined the documents.

8. In the Valley Transportation Company case, O.L.R.B. Monthly Report, 1964, p. 140, the Board said:

> "The Board must expect and insist that persons who file applications for membership cards and receipts and Form 9 (now Form 8) as evidence of membership, take all necessary precautions and care to ensure that the information contained therein is true and accurate. The Board is entitled to demand the highest standards of integrity, disclosure, and accuracy on the part of those who submit such evidence and where undisclosed inaccuracies of material facts are later brought to its attention, to take a strict view of them."

9. In my opinion, it was the obligation of Rao to fully investigate the membership evidence in order that he might accurately answer the inquiries of the maker of the Form 8 and in addition, to make certain that the membership evidence in support of the application was accurate. Because he was both a witness to the payment of the $1.00 and the application for membership by Mrs. Kaytaz, even a cursory examination would have disclosed that such evidence was inaccurate and that he should not forward it in support of the union's application.

10. Further, I am unable to place any reliance whatsoever on the membership cards filed in support of this application wherein Nitsotolis was either the collector or the witness.

11. That being so, I would have taken the "strict view", referred to in the Valley Transportation Company Limited case, supra, and would have dismissed the application.

16905-69-R: Office and Professional Employees International Union, Local 454 (Applicant) v. The Lakehead Board of Education (Respondent) v. Building Service Employees Union, Local 268 (Intervener).

BEFORE: J. H. Brown, Q.C., Alternate Chairman, and Board Members O. Hodges and H. F. Irwin.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER O. HODGES: February 23, 1970.

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10. The Board has considered the evidence contained in the Report of the Examiner dated January 28, 1970 with respect to Mrs. Karen Wintermute who is classified as a head secretary. The parties agreed that the evidence of Mrs. Wintermute would apply to all other persons classified as head secretaries employed in the respondent's secondary schools. The respondent asserts that Mrs. Wintermute exercises managerial functions and/or is employed in a confidential capacity in matters relating to labour relations. The applicant has adopted the opposite position with respect to the classification of head secretaries.

11. Dealing first with the confidential aspect of her job, Mrs. Wintermute's testimony is that if there was work of a confidential nature she would handle it herself. There is no indication, however, that any "work of a confidential nature" is

IN MATTERS RELATING TO LABOUR RELATIONS. INDEED, HER SUBSEQUENT TESTIMONY WOULD SUGGEST THAT SUCH IS NOT THE CASE. FOR INSTANCE, MRS. WINTERMUTE'S EVIDENCE IS THAT SHE CONSIDERS THE PRINCIPAL'S FILES TO BE "CONFIDENTIAL". YET SHE ADMITTED THAT ALL OF THE OFFICE STAFF HAVE ACCESS TO THEM. FURTHER, SHE WAS NOT EVEN AWARE WHETHER A PERSONAL FILE WAS MAINTAINED BY THE PRINCIPAL FOR THE OFFICE STAFF. IN ALL THESE CIRCUMSTANCES, WE FIND THAT MRS. WINTERMUTE IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

12. MAKING A DETERMINATION AS TO WHETHER A PERSON IS EMPLOYED IN A MANAGERIAL CAPACITY IS A MORE DIFFICULT ASSESSMENT TO MAKE. THE BOARD IN A NUMBER OF RECENT DECISIONS HAS RECOGNIZED THE GROWING COMPLEXITY OF MANAGEMENT STRUCTURES, THE DIFFUSION OF THE LINES OF AUTHORITY AND THE DIVERGENT ELEMENTS THAT GO INTO THE DECISION MAKING PROCESS. THE BOARD, ACCORDINGLY, IN MAKING SUCH DETERMINATION ENDEAVOURS TO DISTINGUISH BETWEEN PERSONS WHO TRULY EXERCISE INDEPENDENT DISCRETION OR ASSERT REAL AUTHORITY, AS OPPOSED TO THOSE WHO MERELY IMPLEMENT DECISION S WITHIN A FRAMEWORK DECIDED BY OTHERS OR WHOSE INDEPENDENT DISCRETION IS LIMITED TO PRE-DETERMINED CIRCUMSCRIBED AREAS. THE BOARD IS COGNIZANT OF THE FACT ALSO THAT MANAGEMENT TODAY GENERALLY NEEDS THE ASSISTANCE AND ADVICE OF RESPONSIBLE AND HIGHLY QUALIFIED INDIVIDUALS IN THE FIELDS OF THEIR PARTICULAR KNOWLEDGE. THE FACT THAT SUCH ASSISTANCE OR ADVICE IS SOUGHT AND IS ACCEPTED OR TAKEN INTO ACCOUNT BY MANAGEMENT DOES NOT MEAN THAT SUCH PERSONS EXERCISE MANAGERIAL FUNCTIONS IN THEIR OWN RIGHT. IN ALL CASES, THE BOARD MUST EVALUATE THE TOTALITY OF EACH PERSON'S JOB FUNCTIONS IN DECIDING WHETHER THE PERSON CONCERNED, IN AN INTRINSIC SENSE, EXERCISES MANAGERIAL AUTHORITY (SEE THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE, 1969 AUG. OLRB M.R. P. 669, AND AJAX AND PICKERING GENERAL HOSPITAL CASE, DATED FEBRUARY 19, 1970, BOARD FILE NO. 15917-68-R).

13. WITHOUT REVIEWING THE EVIDENCE OF MRS. WINTERMUTE IN DETAIL, WE FIND THAT SHE ESSENTIALLY ACTS UNDER THE AUTHORITY AND DIRECTION OF THE SCHOOL PRINCIPAL AND ALL MANAGERIAL DECISIONS ARE MADE BY HIM, ALTHOUGH SHE IS, ON OCCASION, CONSULTED AND HER ADVICE IS SOUGHT AND SOMETIMES IMPLEMENTED. WE FIND FURTHER THAT HER AUTHORITY AND DIRECTION OVER OTHER MEMBERS OF THE OFFICE STAFF FALL WITHIN PREDETERMINED AND CIRCUMSCRIBED LIMITS ESTABLISHED BY MANAGEMENT. ACCORDINGLY, IT IS OUR CONCLUSION THAT MRS. WINTERMUTE DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THEMEANING OF SECTION 1(3)(B) OF THE ACT AND IS INCLUDED IN THE BARGAINING UNIT. THIS CONCLUSION, AS STATED ABOVE, ALSO APPLIES TO DORIS CHARBONNEAU, LILLIAN DANARD, HELEN KENNELLY, IRENE MATCHETT, PEGGY MCNABB, HELEN SHAW, DOROTHY TINKESS, HELEN WRIGHT AND JOYCE ZACHARY.

14. THE BOARD RECEIVED A LETTER DATED JANUARY 27, 1970 SIGNED BY THE ABOVE THREE PERSONS WHO ARE CLASSIFIED AS AUDIO-VISUAL TECHNICIANS. THE LETTER STATES THAT THEY DO NOT WISH TO BE INCLUDED IN A BARGAINING UNIT REPRESENTED BY THE APPLICANT AND THEY EXPRESSED A PREFERENCE TO BE REPRESENTED BY THE INTERVENER. THE THREE PERSONS CONCERNED FAILED TO FILE WITH THE BOARD A STATEMENT OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION OF THE APPLICANT BY NOVEMBER 5, 1969, THE TERMINAL DATE IN THIS MATTER, AS REQUIRED BY SECTION 48 OF THE BOARD'S RULES OF PROCEDURE. ACCORDINGLY, WE CANNOT GIVE ANY WEIGHT TO THE LETTER AS AN EXPRESSION OF OPPOSITION TO CERTIFICATION OF THE APPLICANT. WE WOULD MENTION THAT THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE RESPONDENT AND THE INTERVENER DOES NOT APPEAR TO COVER AUDIO-VISUAL TECHNICIANS EITHER BY ITS SCOPE CLAUSE OR BY THE CLASSIFICATIONS LISTED IN THE WAGE SCHEDULE CONTAINED IN THE AGREEMENT. INDEED, IN THEIR LETTER THERE IS AN ACKNOWLEDGMENT THAT THE INTERVENER HAS NOT REPRESENTED THEM IN COLLECTIVE BARGAINING. MOREOVER, THE INTERVENER HAS MADE NO CLAIM TO REPRESENT THEM. AS A MATTER OF RECORD, THE INTERVENER, ALTHOUGH NOTIFIED, WAS NOT REPRESENTED AT THE BOARD HEARING OF THE APPLICATION OR AT THE HEARING BEFORE THE EXAMINER APPOINTED IN THIS MATTER.

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16. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN: FEBRUARY 23, 1970.

1. I DISSENT FROM THE INCLUSION OF HEAD SECRETARIES IN THE BARGAINING UNIT. THESE SECRETARIES ARE IN CHARGE OF THE OFFICE CLERICAL STAFF IN EACH SCHOOL AND IN SUCH CAPACITY THEIR DUTIES AND RESPONSIBILITIES REQUIRE THEM TO EXERCISE MANAGERIAL FUNCTIONS AND/OR BE EMPLOYED IN A CONFIDENTIAL CAPACITY IN RESPECT OF LABOUR RELATIONS.

2. IT WAS AGREED BY THE PARTIES THAT THE EVIDENCE OF MRS. KAREN WINTERMUTE, A PERSON CLASSIFIED AS HEAD SECRETARY AT LAKEVIEW HIGH SCHOOL, IS REPRESENTATIVE OF AND APPLICABLE TO THE DUTIES AND RESPONSIBILITIES OF ALL PERSONS CLASSIFIED AS HEAD SECRETARIES.

3. THE FOLLOWING ARE EXCERPTS FROM THE REPORT OF THE EXAMINER PERTAINING TO MRS. WINTERMUTE'S DUTIES AND RESPONSIBILITES:

PARAGRAPH NUMBER	DUTIES AND RESPONSIBILITIES
9.	HEAD SECRETARY LAKEVIEW HIGH SCHOOL FOR APPROXIMATELY 4 YEARS.
10.	HER IMMEDIATE SUPERVISOR IS MR. SINE, THE SCHOOL PRINCIPAL.

PARAGRAPH NUMBER	DUTIES AND RESPONSIBILITIES
11.	SHE SUPERVISES THE WORK OF 4 SECRETARIES IN THE SCHOOL OFFICE, ASSIGNING, AND TO SOME EXTENT CHECKING THEIR WORK AND REPRIMANDING THEM IF NECESSARY.
12.	SHE HAS BEEN PRESENT DURING INTERVIEWS CONDUCTED BY THE SCHOOL PRINCIPAL WITH RESPECT TO THE HIRING OF NEW EMPLOYEES FOR THE OFFICE STAFF.
	SHE HAS ASKED QUESTIONS OF JOB APPLICANTS HERSELF DURING INTERVIEWS.
	HER OPINION ON THE QUALIFICATIONS OF JOB APPLICANTS HAS BEEN SOUGHT BY THE PRINCIPAL.
28.	HER OPINION IN RESPECT OF THE APPLICANTS HAD NOT REALLY EVER BEEN DISREGARDED.
13.	SHE IS RESPONSIBLE FOR TRAINING NEW EMPLOYEES ON PROCEDURES USED IN THE OFFICE AND REPORTS ON THEIR PROGRESS TO THE PRINCIPAL.
14.	ON MRS. WINTERMUTE'S RECOMMENDATION THE PRINCIPAL OF THE SCHOOL TOOK STEPS TO TERMINATE AN EMPLOYEE'S SERVICES.
15.	ALTHOUGH SHE DOES NOT HAVE THE AUTHORITY TO RECOMMEND A SALARY INCREASE FOR EMPLOYEES, HER OPINION HAS BEEN ASKED BY THE PRINCIPAL OF THE SCHOOL WHEN INCREASES WERE UNDER CONSIDERATION.
16.	SHE CAN AUTHORIZE CASUAL TIME-OFF FOR EMPLOYEES FOR SHORT PERIODS.
17.	MRS. WINTERMUTE DECIDES HERSELF WHEN OVERTIME NEEDS TO BE WORKED AND SEEKS THE APPROVAL OF THE OVERTIME FROM THE SCHOOL PRINCIPAL.
19.	SHE HAS HAD DISCUSSIONS WITH THE PRINCIPAL AND VICE-PRINCIPAL CONCERNING OFFICE ROUTINE AND STAFF MATTERS SUCH AS SALARY INCREASES FOR EMPLOYEES AND WORK PERFORMANCE.
20.	SHE HAS DISCRETION TO REARRANGE OR ALLOCATE THE STAFF IN ORDER TO INSURE THAT THE WORK LOAD OF THE OFFICE IS EFFICIENTLY HANDLED.

25. RESPONSIBLE FOR TYPING AND COMPARING ALL DEPARTMENTAL BUDGETS FOR SUBMISSION TO THE BOARD.

4. IF A COLLECTIVE AGREEMENT WAS ENTERED INTO, IN MY OPINION, MRS. WINTERMUTE WOULD PROBABLY BE THE PERSON REPRESENTING MANAGEMENT AT THE FIRST STEP IN THE GRIEVANCE PROCEDURE AS SHE DOES AT THE PRESENT TIME.

5. IN VIEW OF HER DUTIES AND RESPONSIBILITIES OUTLINED ABOVE, I WOULD FIND THAT MRS. WINTERMUTE IS NOT AN EMPLOYEE WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. EVEN IF I FOUND HER TO BE AN EMPLOYEE, I WOULD HAVE EXCLUDED HER FROM THE BARGAINING UNIT ON THE BASIS OF APPROPRIATENESS. IN MY OPINION, IT WOULD BE COMPLETELY INCOMPATIBLE TO INCLUDE HER IN THE BARGAINING UNIT.

16950-69-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) v. MARGARET'S FINE FOODS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: L. A. MACLEAN, N. A. GROCUTT, DOMENIC RICCI AND EVA RICCIARDI FOR THE APPLICANT, F. R. VON VEH, R. BRAZIER AND W. DOUGLAS FOR THE RESPONDENT, ROBIN B. CUMINE, MARIA CONTELLA AND BENNY CONTELLA FOR THE OBJECTORS.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE: FEBRUARY 19, 1970.

1. THIS APPLICATION FOR CERTIFICATION WAS MADE ON NOVEMBER 4, 1969, AND THE TERMINAL DATE FIXED FOR THIS APPLICATION WAS NOVEMBER 13, 1969.

2. THIS MATTER CAME ON FOR HEARING ON NOVEMBER 21, 1969, DECEMBER 16, 1969, AND AGAIN ON FEBRUARY 11, 1970. ONE OF THE MATTERS DEALT WITH BY THE BOARD AT THEHEARINGS WAS THE ALLEGATION THAT AN EMPLOYEE, MR. SPATAFORA, HAD NOT SIGNED THE MEMBERSHIP CARD WHICH HAD BEEN SUBMITTED BY THE UNION ON HIS BEHALF. THE EVIDENCE ESTABLISHED THAT TWO OF THE APPLICANT'S ORGANIZERS HAD ATTENDED AT THE HOME OF MR. SPATAFORA. MR. SPATAFORA WAS ON HIS WAY TO WORK AT THE TIME AND SPOKE TO THE TWO REPRESENTATIVES OF THE APPLICANT ON THE VERANDA OF HIS HOME.

WHEN ASKED TO SIGN A CARD, MR. SPATAFORA PLACED THE CARD ON THE POST OF THE VERANDA RAILING AND TURNED HIS BACK ON THE REPRESENTATIVES AND BENT OVER THE CARD IN SUCH A WAY THAT HE COULD SIGN THE CARD. MR. SPATAFORA ADVISED THE APPLICANT'S REPRESENTATIVES THAT HE WOULD HAVE TO GO INTO HIS HOME TO GET THE INITIATION FEE AND EXCUSED HISELF. MR. SPATAFORA WENT INTO HIS HOME WHERE, UNBEKNOWNST TO THE REPRESENTATIVES OF THE APPLICANT, HE DISCUSSED THE QUESTION OF WHETHER HE SHOULD JOIN THE APPLICANT UNION WITH HIS SON WHO WAS BUSILY ENGAGED WITH HIS HOMEWORK. AFTER DISCUSSING THE MATTER WITH HIS SON, MR. SPATAFORA APPARENTLY HAD NOT MADE UP HIS MIND AND FINALLY HIS SON SIGNED MR. SPATAFORA'S NAME ON THE CARD AND STATED, "WHAT COMES COMES." AT THIS POINT, MR. SPATAFORA PICKED UP THE CARD AND TOOK IT OUT TO THE VERANDA WHERE HE HANDED IT TO ONE OF THE APPLICANT'S REPRESENTATIVES TOGETHER WITH THE INITIATION FEE. MR. SPATAFORA DID NOT DISCLOSE TO THE APPLICANT'S REPRESENTATIVES THAT HE HAD NOT IN FACT SIGNED THE CARD OR THAT HIS SON HAD SIGNED THE CARD ON HIS BEHALF.

3. THE CARD IN QUESTION READS AS FOLLOWS:

BAKERY & CONFECTIONERY WORKERS INTERNATIONAL
UNION OF AMERICA, LOCAL 264

LOCAL UNION NO. 264

I REQUEST AND ACCEPT MEMBERSHIP IN THE BAKERY & CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 264, AND OF MY OWN FREE WILL HEREBY AUTHORIZE THE BAKERY & CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, ITS AGENTS OR REPRESENTATIVES, TO ACT FOR ME AS A COLLECTIVE BARGAINING AGENCY IN ALL MATTERS PERTAINING TO RATES OF PAY, WAGES, HOURS OF EMPLOYMENT, AND TO ENTER INTO CONTRACTS WITH MY EMPLOYER COVERING ALL SUCH MATTERS.

DATE_____, 1969 _____
SIGNATURE OF APPLICANT

$1.00 INITIATION FEE RECEIVED BY_____
SIGNATURE OF COLLECTOR

I HEREBY CERTIFY THAT I PAID THE ABOVE AMOUNT

DATE_____, 1969 _____
SIGNATURE OF APPLICANT

4. IT IS TO BE NOTED THAT THE COLLECTOR, BY HIS SIGNATURE,

MERELY ACKNOWLEDGES THE RECEIPT OF THE INITIATION FEE. THE COLLECTOR DOES NOT STATE THAT HE HAS WITNESSED THE SIGNATURE OF THE APPLICANT MEMBER.

5. IT WAS APPARENT FROM THE EVIDENCE THAT MR. SPATAFORA LEFT THE DECISION AS TO WHETHER OR NOT THE CARD SHOULD BE SIGNED TO HIS SON AND ACCEPTED HIS SON'S DECISION THAT HE SHOULD JOIN THE APPLICANT UNION. IT IS ALSO APPARENT FROM THE EVIDENCE THAT WHEN THE SON DECIDED TO SIGN THE CARD ON HIS FATHER'S BEHALF THAT MR. SPATAFORA HAD AUTHORIZED HIS SON TO SIGN THE CARD ON HIS BEHALF. IN DELIVERING THE SIGNED CARD TO THE APPLICANT'S REPRESENTATIVES TOGETHER WITH THE INITIATION FEE, MR. SPATAFORA REPRESENTED BY HIS ACTIONS THAT HE HAD SIGNED THE CARD. IN THESE CIRCUMSTANCES, IT WAS THEREFORE REASONABLE FOR THE APPLICANT'S REPRESENTATIVES TO BELIEVE, AS THEY DID, THAT THE CARD HAD IN FACT BEEN SIGNED BY MR. SPATAFORA. THE APPLICANT'S REPRESENTATIVES HAD NO REASON TO BELIEVE OTHERWISE.

6. IN THESE CIRCUMSTANCES, THE BOARD IS PREPARED TO ACCEPT THE MEMBERSHIP CARD SUBMITTED ON BEHALF OF MR. SPARAFORA AS EVIDENCE OF MEMBERSHIP OF MR. SPATAFORA. SINCE MR. SPATAFORA INTENDED THAT HIS SON MAKE THE DECISION FOR HIM AND WAS PREPARED TO ABIDE BY THAT DECISION, WHEN MR. SPATAFORA SUBMITTED THE MEMBERSHIP CARD TO THE APPLICANT'S REPRESENTATIVES, WITHOUT COMMENT, HE MUST BE CONSIDERED TO HAVE TREATED THE SIGNATURE ON THE CARD AS HIS OWN. IN SUCH CIRCUMSTANCES, WE ARE PREPARED TO GIVE EFFECT TO THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT ON BEHALF OF MR. SPATAFORA. AGAIN, SINCE THE APPLICANT'S REPRESENTATIVES HAD NO KNOWLEDGE OF THE CIRCUMSTANCES SURROUNDING THE SIGNING OF THE CARD AND HAD NO REASON TO CHALLENGE MR. SPATAFORA WITH RESPECT TO THE SIGNATURE THAT APPEARED ON THE FACE OF THE CARD AND HAVING ACCEPTED THE CARD IN GOOD FAITH, THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, FORM 8, CANNOT BE SAID TO BE DEFECTIVE BY REASON OF THE FACT THAT THERE HAS BEEN NO DISCLOSURE WITH RESPECT TO THE FACT THAT THE CARD WAS SIGNED BY THE SON ON HIS FATHER'S BEHALF.

7. AT THE HEARING ON FEBRUARY 11, 1970, THE RESPONDENT AND THE OBJECTORS CHALLENGED THE APPLICANT'S MEMBERSHIP EVIDENCE ON THE GROUNDS THATIT DID NOT COMPLY WITH THE REQUIREMENTS OF THE APPLICANT'S CONSTITUTION. THE RESPONDENT AND THE OBJECTORS RELIED UPON THE DECISION OF THE SUPREME COURT OF CANADA IN THE METROPOLITAN LIFE INSURANCE COMPANY V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 ET AL, IN A JUDGMENT PRONOUNCED ON JANUARY 27, 1970, NOW REPORTED IN 70 CLLC ¶ 14,008. COUNSEL FOR THE RESPONDENT DREW THE BOARD'S ATTENTION TO THE FACT THAT THE MEMBERSHIP EVIDENCE FILED CONSISTED OF SIGNED APPLICATION

CARDS AND RECEIPTS FOR PAYMENT OF $1.00 SUPPORTED BY THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, FORM 8. SUCH EVIDENCE OF MEMBERSHIP APPEARED ON ITS FACE TO BE AT VARIANCE WITH CERTAIN SPECIFIC PROVISIONS OF THE APPLICANT'S CONSTITUTION WHICH WERE ENUMERATED BY THE RESPONDENT.

8. THE APPLICANT SUBMITTED AT THE HEARING A LETTER FROM THE INTERNATIONAL PRESIDENT OF THE APPLICANT DATED FEBRUARY 6, 1970, WHICH READS AS FOLLOWS:

> THIS WILL CONFIRM THAT, AS IN THE PAST, NEWLY ORGANIZED EMPLOYEES IN THE PROVINCE OF ONTARIO BECOME MEMBERS OF THE BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA AND LOCAL 264 UPON SIGNING AN APPLICATION FOR MEMBERSHIP AND PAYING A SUM OF $1.00 TOWARDS AN INITIATION FEE.
>
> FURTHER, THIS WILL CONFIRM THAT LOCAL 264 IS AND HAS BEEN AUTHORIZED TO REDUCE THE INITIATION FEE FOR APPLICANTS EMPLOYED IN PLANTS BEING ORGANIZED TO THE SUM OF $1.00.
>
> IN THIS RESPECT THE GENERAL EXECUTIVE BOARD CONFIRMED THE ELIGIBILITY AND ACCEPTANCE INTO MEMBERSHIP OF ALL PERSONS EMPLOYED BY MARGARET FINE FOODS, LTD., WHO HAVE SIGNED APPLICATIONS FOR MEMBERSHIP AND PAID $1.00 AS INITIATION FEE.
>
> WITH BEST WISHES FOR SUCCESS IN YOUR ORGANIZATIONAL WORK, I AM,

9. THE APPLICANT ARGUED THAT IN VIEW OF THE LETTER REFERRED TO ABOVE, THE CONSTITUTIONAL REQUIREMENTS HAVE BEEN SATISFIED SINCE THE GENERAL EXECUTIVE BOARD CONFIRMED THE ELIGIBILITY AND ACCEPTANCE INTO MEMBERSHIP OF ALL PERSONS EMPLOYED BY THE RESPONDENT WHO HAVE SIGNED APPLICATIONS FOR MEMBERSHIP AND PAID $1.00 AS INITIATION FEE.

10. THE BOARD IS UNABLE TO ACCEPT THE APPLICANT'S SUBMISSIONS AS TO THE EFFECT OF THE LETTER FROM THE INTERNATIONAL PRESIDENT DATED FEBRUARY 6, 1970. AS STATED ABOVE, THE TERMINAL DATE FOR THIS APPLICATION WAS NOVEMBER 13, 1969. THERE IS NO INDICATION IN THE LETTER OF FEBRUARY 6, 1970 AS TO WHEN THE GENERAL EXECUTIVE BOARD OF THE APPLICANT "CONFIRMED THE ELIGIBILITY AND ACCEPTANCE INTO MEMBERSHIP OF ALL PERSONS EMPLOYED BY MARGARET FINE FOODS, LTD., WHO HAVE SIGNED APPLICATIONS FOR MEMBERSHIP AND PAID $1.00

AS INITIATION FEE". SECTION 48(1) OF THE BOARD'S RULES OF PROCEDURE PROVIDES THAT "EVIDENCE OF MEMBERSHIP IN A TRADE UNION... SHALL NOT BE ACCEPTED BY THE BOARD ON AN APPLICATION FOR CERTIFICATION... UNLESS THE EVIDENCE IS IN WRITING...AND IS FILED NOT LATER THAN THE TERMINAL DATE OF THE APPLICATION". WHILE ALL THE MEMBERSHIP APPLICATION FORMS SIGNED BY THE EMPLOYEES WERE FILED PRIOR TO THE TERMINAL DATE, THERE IS NO EVIDENCE THAT AS OF THE TERMINAL DATE THE PERSONS WHO SIGNED THE MEMBERSHIP DOCUMENTS WERE IN FACT ACCEPTED INTO MEMBERSHIP BY THE APPLICANT UNION. IF THE LETTER OF FEBRUARY 6, 1970 SPEAKS AS OF THAT DATE, THE GENERAL EXECUTIVE BOARD WOULD ONLY HAVE CONFIRMED THEIR ACCEPTANCE INTO MEMBERSHIP AS OF FEBRUARY 6, 1970, WHICH WAS SEVERAL MONTHS AFTER THE TERMINAL DATE. IN THESE CIRCUMSTANCES, AND APART FROM ANY OTHER OBJECTION THAT MIGHT BE TAKEN WITH RESPECT TO THE ADEQUACY OF THE LETTER OF FEBRUARY 6, 1970, THE BOARD IS NOT PREPARED TO ACCEPT SUCH LETTER AS EVIDENCE WHICH WOULD ESTABLISH THAT THE PERSONS CLAIMED BY THE APPLICANT AS MEMBERS WERE IN FACT MEMBERS ON THE TERMINAL DATE OF THIS APPLICATION, IN VIEW OF THE PROVISIONS OF THE APPLICANT'S CONSTITUTION WHICH HAVE BEEN REFERRED TO BY THE RESPONDENT.

11. AT THE HEARING IN THIS MATTER, THE PARTIES ALL RECOGNIZED THAT THE APPLICANT HAD, AS OF THE TERMINAL DATE, FILED ITS EVIDENCE OF MEMBERSHIP IN ACCORDANCE WITH THE STATED POLICY OF THE BOARD WHICH WAS IN EFFECT AT THE TIME THE APPLICATION WAS MADE AND WHICH IS QUOTED IN DETAIL IN THE METROPOLITAN LIFE INSURANCE COMPANY JUDGMENT OF THE SUPREME COURT OF CANADA, REFERRED TO ABOVE. IT WAS THE RESPONDENT'S POSITION THAT THE RESPONDENT COMPANY DID NOT WISH TO TAKE ADVANTAGE OF AN APPLICANT WHO HAD ATTEMPTED TO COMPLY WITH THE BOARD'S REQUIREMENTS AS THEY EXISTED AT THE TIME THE APPLICATION WAS MADE. WITH THIS SENTIMENT WE AGREE. WE ARE OF OPINION THAT WHERE AN APPLICANT HAS COMPLIED WITH THE BOARD'S STATED POLICY AND SUBSEQUENTLY FINDS THAT THAT POLICY HAS BEEN CHANGED, THROUGH NO FAULT OF THE APPLICANT, AN OPPORTUNITY MUST BE GIVEN TO THE APPLICANT TO REMEDY ANY DEFECT IN ITS APPLICATION WHICH WAS CAUSED BY THE APPLICANT'S ATTEMPT TO COMPLY WITH THE BOARD'S STATED POLICY.

12. THE BOARD IS THEREFORE OF OPINION THAT A NEW TERMINAL DATE SHOULD BE FIXED FOR THIS APPLICATION AND, PURSUANT TO THE PROVISIONS OF SECTION 57(2) OF THE BOARD'S RULES OF PROCEDURE, ENLARGES THE TIME FOR THE FILING OF NEW EVIDENCE OF MEMBERSHIP AND THE REGISTRAR IS DIRECTED TO FIX A NEW TERMINAL DATE FOR THIS PURPOSE.

13. HOWEVER, THE ONUS IS ON THE APPLICANT TO SATISFY THE BOARD THAT THE EMPLOYEES CLAIMED BY IT AS MEMBERS WERE MEMBERS

OF THE APPLICANT, ON THE TERMINAL DATE OF THE APPLICATION, WITHIN THE MEANING AND PURSUANT TO THE PROVISIONS OF THE APPLICANT'S CONSTITUTION AND BY-LAWS. IT IS APPARENT FROM THE DECISION OF THE METROPOLITAN LIFE INSURANCE COMPANY CASE THAT THE BOARD MUST LOOK AT THE APPLICANT'S MEMBERSHIP EVIDENCE IN LIGHT OF THE APPLICANT'S OWN CONSTITUTION AND BY-LAWS IN ORDER THAT THE BOARD BE SATISFIED THAT THE EMPLOYEES IN THE BARGAINING UNIT WERE MEMBERS OF THE APPLICANT TRADE UNION WITHIN THE MEANING OF SECTION 7 OF THE LABOUR RELATIONS ACT. THE BOARD IS UNABLE TO PREDETERMINE THE QUALIFICATIONS FOR MEMBERSHIP IN ANY TRADE UNION IN ORDER TO OBTAIN A UNIFORM METHOD OF DETERMINING MEMBERSHIP. EACH TRADE UNION MUST BE PREPARED TO SATISFY THE BOARD THAT THE PERSONS CLAIMED BY IT ARE MEMBERS OF THAT TRADE UNION WITHIN THE TERMS AND PROVISIONS OF THE TRADE UNION'S OWN CONSTITUTION AND BY-LAWS. THE BOARD IS NOT SATISFIED THAT THERE IS SUFFICIENT EVIDENCE BEFORE THE BOARD, AS OF THE TERMINAL DATE, TO MEET THE TEST OF THE APPLICANT'S OWN CONSTITUTION AND BY-LAWS AS REQUIRED BY THE METROPOLITAN LIFE INSURANCE COMPANY JUDGMENT.

14. AT THE HEARING IN THIS MATTER, COUNSEL FOR THE RESPONDENT SUGGESTED THAT AN APPLICANT TRADE UNION FACED WITH THE SITUATION WITH WHICH WE ARE HERE CONCERNED SHOULD BE GIVEN THE NECESSARY OPPORTUNITY TO FILE NEW EVIDENCE OF MEMBERSHIP THAT SATISFIES THE REQUIREMENTS OF THE APPLICANT'S CONSTITUTION AND BY-LAWS AND THAT A NEW TERMINAL DATE BE FIXED FOR THIS PURPOSE. COUNSEL FOR THE RESPONDENT FURTHER SUGGESTED THAT IF THE APPLICANT FILED A DOCUMENT ANALOGOUS TO FORM 8, WHEREIN A RESPONSIBLE OFFICIAL OF THE APPLICANT STATES THAT THE DOCUMENTARY EVIDENCE OF MEMBERSHIP ON FILE WITH THE BOARD COMPLIES WITH THE TERMS AND PROVISIONS OF THE APPLICANT'S CONSTITUTION AND RELEVANT BY-LAWS, SUCH A DOCUMENT MIGHT ESTABLISH PRIMA FACIE EVIDENCE THAT THE APPLICANT'S CONSTITUTIONAL REQUIREMENTS WITH RESPECT TO MEMBERSHIP HAVE BEEN SATISFIED.

15. THE BOARD HAS GIVEN CONSIDERATION TO THE SUGGESTIONS BY THE SOLICITOR FOR THE RESPONDENT AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, AND THE BOARD IS SATISFIED THAT SECTION 77(2)(c) AND (J) OF THE ACT CONFER THE NECESSARY POWERS ON THE BOARD TO ACCEPT A DECLARATION IN THE FORM SUGGESTED. SECTION 77(2)(c) AND (J) OF THE ACT READ AS FOLLOWS:

> 77.-(2) WITHOUT LIMITING THE GENERALITY OF SUBSECTION 1, THE BOARD HAS POWER,
>
> (c) TO ACCEPT SUCH ORAL OR WRITTEN EVIDENCE AS IT IN ITS DISCRETION DEEMS PROPER, WHETHER ADMISSIBLE IN A COURT OF LAW OR NOT;

(J) TO DETERMINE THE FORM IN WHICH AND THE TIME AS OF WHICH EVIDENCE OF MEMBERSHIP IN A TRADE UNION OR OF OBJECTION BY EMPLOYEES TO CERTIFICATION OF A TRADE UNION OR OF SIGNIFICATION BY EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY A TRADE UNION SHALL BE PRESENTED TO THE BOARD ON AN APPLICATION FOR CERTIFICATION OR FOR A DECLARATION TERMINATING BARGAINING RIGHTS, AND TO REFUSE TO ACCEPT ANY EVIDENCE OF MEMBERSHIP OR OBJECTION OR SIGNIFICATION THAT IS NOT PRESENTED IN THE FORM AND AS OF THE TIME SO DETERMINED.

16. THEREFORE, IF A DECLARATION, ANALOGOUS TO FORM 8, IS FILED WITH THE BOARD BY THE APPLICANT PRIOR TO THE NEW TERMINAL DATE OF THIS APPLICATION, SUCH DECLARATION MAY WELL CONSTITUTE ACCEPTABLE EVIDENCE. THE DECLARATION MUST BE SIGNED BY A RESPONSIBLE OFFICIAL OF THE APPLICANT AND SHOULD STATE THE FACT THAT THE PERSONS, ON WHOSE BEHALF THE APPLICANT HAS SUBMITTED SIGNED DOCUMENTARY EVIDENCE OF MEMBERSHIP, ARE ELIGBLE FOR AND HAVE BEEN ACCEPTED INTO MEMBERSHIP BY THE APPLICANT AS OF THE DATE OF SUCH DECLARATION IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THE APPLICANT'S CONSTITUTION AND BY-LAWS. THE DECLARATION MAY CONSTITUTE PRIMA FACIE EVIDENCE THAT THE PERSONS ON WHOSE BEHALF THE APPLICANT HAS SUBMITTED OTHER SIGNED DOCUMENTARY EVIDENCE OF MEMBERSHIP ARE MEMBERS OF THE APPLICANT WITHIN THE MEANING OF THE APPLICANT'S CONSTITUTION AND BY-LAWS. IT GOES WITHOUT SAYING THAT SUCH PRIMA FACIE EVIDENCE MAY BE CONTRAVERTED BY OTHER EVIDENCE. HOWEVER, THE ONUS OF CALLING SUCH OTHER EVIDENCE RESTS UPON THE PARTY WISHING TO CHALLENGE THE PRIMA FACIE EVIDENCE OF MEMBERSHIP WHICH THE APPLICANT SUBMITS.

17. THE REGISTRAR IS ACCORDINGLY DIRECTED TO FIX A NEW TERMINAL DATE FOR THIS APPLICATION IN ACCORDANCE WITH THE PROVISIONS OF SECTION 2 OF THE BOARD'S RULES OF PROCEDURE AND TO EFFECT THE SERVICES REQUIRED BY SECTION 4 OF THOSE RULES.

DECISION OF BOARD MEMBER O. HODGES: FEBRUARY 19, 1970.

I DISSENT.

THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT UNION, SUBSTANTIATED BY THE LETTER FROM THE INTERNATIONAL PRESIDENT, SATISFIES ME THAT THE REQUIREMENTS OF MEMBERSHIP ACCORDING TO THE CONSTITUTION OF THE UNION HAVE BEEN MET.

I AM THEREFORE SATISFIED WITH THE APPLICANT'S MEMBERSHIP EVIDENCE.

16960-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) v. CUSTOM GLASS LTD. (RESPONDENT) v. UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (INTERVENER).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: FEBRUARY 23, 1970.

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2. IN THIS CASE, AS A RESULT OF A SUBMISSION BY THE RESPONDENT, THE BOARD FOUND IN A DECISION DATED JANUARY 12, 1970, THAT THE RESPONDENT HAD A PLANNED PROGRAMME TO INCREASE ITS WORK FORCE AND THE BOARD THEREFORE POSTPONED THE MAKING OF A FINAL DETERMINATION IN THE APPLICATION UNTIL A FUTURE DATE. IN THE SAME DECISION THE BOARD ORDERED THE RESPONDENT TO REPORT TO THE BOARD PERIODICALLY ON THE NUMBER OF PERSONS IN ITS EMPLOY IN THE FORESAID BARGAINING UNIT. IT APPEARS FROM THE REPORTS FILED BY THE RESPONDENT THAT THE PLANNED BUILD-UP OF ITS WORK FORCE HAS NOT TAKEN PLACE AND THAT IN FACT ITS WORK FORCE HAS DECREASED SINCE THE DATE OF THE APPLICATION.

3. ACCORDINGLY, IN THE CIRCUMSTANCES OF THIS CASE, THE BOARD IS NOT PREPARED TO POSTPONE A FINAL DETERMINATION ANY LONGER IN THIS MATTER.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 3 OF THE BOARD'S DECISION DATED JANUARY 12, 1970, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 17, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. IN THIS CASE THE INTERVENER HAS ALSO APPLIED FOR CERTIFICATION. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 3 OF THE BOARD'S DECISION DATED JANUARY 12, 1970, AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE INTERVENER ON NOVEMBER 17, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. IN THESE CIRCUMSTANCES, THE BOARD DIRECTS A VOTE IN THE BARGAINING UNIT WHICH IT FOUND TO BE APPROPRIATE IN ITS DECISION OF JANUARY 12, 1970, WHICH IS DESCRIBED AS FOLLOWS:

> "ALL EMPLOYEES OF THE RESPONDENT AT NEWCASTLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING".

7. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED ABOVE ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

8. VOTERS WILL BE ASKED TO INDICATE WHETHER THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT, INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A., OR THE INTERVENER, UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

17039-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. L & W DISTRIBUTORS LTD. CARRYING ON BUSINESS AS N & D SUPERMARKET (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: VIC PATHE FOR THE APPLICANT AND GEORGE S. P. FERGUSON, Q.C. FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 5, 1970.

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3. THE APPLICANT HAS APPLIED FOR BARGAINING UNIT DESCRIBED IN THE FOLLOWING TERMS:

> "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT WINDSOR, ONTARIO, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."

4. IN VIEW OF THE DECISION OF THE BOARD IN THE LONDON FOOD CITY CASE, BOARD FILE NO. 4129-62-R, THE BOARD FINDS THAT THE UNIT PROPOSED DOES NOT CONSTITUTE AN APPROPRIATE BARGAINING UNIT AND THE APPLICATION IS THEREFORE DISMISSED.

5. A SUGGESTION WAS MADE AT THE HEARING THAT THE APPLICANT WAS ENTITLED TO CONSIDERATION AS A CRAFT UNION. THE APPLICATION IS, OF COURSE, NOT FRAMED IN CRAFT TERMS NOR, IT SEEMS, COULD IT BE IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE. IN THIS REGARD IT SHOULD, PERHAPS, BE DRAWN TO THE ATTENTION OF THE PARTIES THAT THE BOARD MIGHT VERY WELL GIVE CONSIDERATION TO AN INITIAL APPLICATION MADE IN A STORE SUCH AS THE RESPONDENT'S, SEEKING CERTIFICATION FOR A UNION DESCRIBED IN THE PRECISE TERMS EMPLOYED IN DEFINING A CRAFT BARGAINING UNIT. SUCH A UNIT WOULD, IF GRANTED, BE REQUIRED TO INCLUDE ALL EMPLOYEES WHO WERE EMBRACED IN THE CRAFT DESCRIPTION AND SEPARATION FROM SUCH A UNIT OF EMPLOYEES WORKING NOT MORE THAN TWENTY-FOUR HOURS PER WEEK WOULD NOT BE PERMITTED.

17092-69-R: CANADIAN CONCRETE FORMING UNION No. 1 (APPLICANT) v. TRIPLE F FORMING LIMITED (RESPONDENT) v. COUNCIL OF CONCRETE FORMING TRADE UNIONS (INTERVENER).

BEFORE: O. B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: ROBIN B. CUMINE AND BRUNO ZANINI FOR THE APPLICANT, JOHN P. SANDERSON AND JOSEPH D. CARRIER FOR THE RESPONDENT, R. KOSKIE FOR THE INTERVENER.

DECISION OF THE BOARD: FEBRUARY 9, 1970.

1. IN THIS MATTER AS THE APPLICANT WAS APPEARING BEFORE THE BOARD FOR THE FIRST TIME, IT WAS REQUIRED TO PROVE ITS STATUS. THE APPLICANT ADDUCED EVIDENCE CONCERNING ITS FORMATION AND SUBMITTED THAT IT HAD COMPLIED WITH WHAT WE SHALL REFER TO AS THE TECHNICAL REQUIREMENTS OF THIS BOARD CONCERNING STATUS. SEE E.G. ALCAN UNIVERSAL HOMES DIVISION OF ALCAN DESIGN HOMES LIMITED 1969 APRIL OLRB MTHLY. REP. 55. AT THE CONCLUSION OF THE EVIDENCE BOTH THE RESPONDENT AND THE INTERVENER SUBMITTED THAT THE APPLICANT HAD NOT COMPLIED WITH THE TECHNICAL REQUIREMENTS CONCERNING STATUS.

2. THE INTERVENER HAD ALSO MADE CERTAIN ALLEGATIONS AND CHARGES AGAINST THE APPLICANT UNION WHICH THE INTERVENER SUGGESTS AFFECT THE APPLICANT'S STATUS AS A TRADE UNION. EVIDENCE CONCERNING THESE ALLEGATIONS WAS NOT ADDUCED PENDING A DECISION CONCERNING THE TECHNICAL REQUIREMENTS. THIS DECISION THEREFORE IS RESTRICTED TO THE OBJECTIONS RAISED TO THE TECHNICAL REQUIREMENTS.

3. The evidence adduced by the applicant indicated that the President, Bruno Zanini, and the Secretary-Treasurer, Enzo Ragno of the applicant, who are also two of the three members of the applicant's executive committee, are not persons who work or normally work as employees in the concrete forming and reinforced concrete construction fields - in fact the evidence indicates to the contrary. Article II.2 of the union's constitution provides that membership in the applicant union is open to any person "who is working or normally works as an employee in the concrete forming and reinforced concrete construction fields" and Article VI provides that only members in good standing shall be entitled to hold office.

4. Further, the applicant's executive committee consists of the President, Vice-President, Secretary and Treasurer. Article VI.4 provides that the office of Secretary and Treasurer may be held by one person and it appears that, pursuant to that article, Mr. Ragno holds both offices. Article IX.5 provides that a quorum at executive committee meetings shall be two members of the committee and, accordingly, if Mr. Zanini the President, and Mr. Ragno the Secretary and Treasurer, are ineligible for election, then there cannot be a quorum of the executive committee.

5. The Powers granted to the President, Secretary-Treasurer and executive committee, either individually or collectively, are extensive and include the control of the financial affairs of the applicant, preserving records, enrolling members, negotiations of collective agreements, disciplining of members by suspension and expulsion, the right to settle all differences with the employers, the direction and control of strikes, the setting of regular membership meetings and the appointment, hiring and supervising of all persons who are usual to the proper operation of a trade union, e.g. business agents and stewards.

6. Having regard to the evidence, we find that Mr. Zanini and Mr. Ragno are not eligible for membership in the union and, accordingly, they are not eligible to hold office.

7. We are further of the opinion that this defect affects the capacity of the applicant to function as a trade union. Section 1(1))j) of The Labour Relations Act provides:

> "'trade union' means an organization of employees formed for purposes that include the regulation of relations between employees and employers...".

WE HOLD THAT IT IS A NECESSARY CONCOMITANT TO SECTION 1(1)(J) THAT AN APPLICANT SEEKING STATUS BEFORE THIS BOARD PROVE THAT IT HAS THE CAPACITY TO REGULATE RELATIONS BETWEEN THE EMPLOYER AND THE EMPLOYEE. BECAUSE OF THE EXTENSIVE POWERS GRANTED TO THE PRESIDENT, SECRETARY-TREASURER AND EXECUTIVE COMMITTEE WE ARE OF THE OPINION THAT THE DEFECT IN ELECTING MR. ZANINI AND MR. RAGNO GOES TO THE VERY ROOT OF THE APPLICANT'S CAPACITY TO FUNCTION AS A TRADE UNION, AND WE FIND THAT THE APPLICANT THEREFORE HAS NOT PROPERLY CONSTITUTED ITSELF AS A TRADE UNION.

8. THAT IS NOT TO SAY THAT IN EVERY CASE A STRICT ADHERENCE TO A CONSTITUTION PROVISION IS REQUIRED IN THE ELECTION OF OFFICERS. FOR EXAMPLE, IF ONE OFFICER IS INELIGIBLE AN APPLICANT MAY BE ABLE TO PERFORM ITS FUNCTIONS UNDER THE ACT THROUGH OTHER PERSONS, AND IN OTHER CASES THERE MAY BE IRREGULARITIES IN THE ELECTION WHICH DO NOT GO TO THE VERY ROOT OF AN APPLICANT'S CAPACITY TO FUNCTION AS A TRADE UNION. IN THOSE CASES THE BOARD MAY GRANT STATUS OR PERHAPS GRANT AN ADJOURNMENT TO ALLOW IRREGULARITIES TO BE REMEDIED - BUT EACH CASE MUST STAND ON ITS OWN PARTICULAR FACTS.

9. IN THIS CASE, EVEN IF WE HAD CONSIDERED THE ELECTION OF MR. ZANINI AND MR. RAGNO TO BE AN IRREGULARITY, THERE IS OTHER EVIDENCE WHICH CASTS SOME DOUBT ON THE PROPRIETY OF THE MEMBERSHIP MEETING WHICH PURPORTED TO ELECT MR. ZANINI AND MR. RAGNO. THERE IS ALSO A PROVISION IN THE CONSTITUTION REQUIRING THAT A PERSON ENTITLED TO HOLD OFFICE SHOULD BE A MEMBER IN GOOD STANDING FOR A PERIOD OF ONE YEAR. IT IS OBVIOUS THAT NONE OF THE OFFICERS HAVE BEEN MEMBERS IN GOOD STANDING OF THE APPLICANT FOR A PERIOD OF ONE YEAR. HAVING REGARD TO ALL OF THESE CIRCUMSTANCES, WE ARE OF THE OPINION THAT THE APPLICATION SHOULD BE DISMISSED.

10. THE APPLICATION IS THEREFORE DISMISSED.

17112-69-R: CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) V. STERLING TILE COMPANY (RESPONDENT) V. THE RESILIENT FLOOR WORKERS LOCAL UNION NO. 2965 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: JEAN JACQUES BLAIS, JOHN MEIORIN FOR THE APPLICANT; B. W. BINNING, H. LEDERMAN FOR THE RESPONDENT; T. E. ARMSTRONG, R. REID FOR THE INTERVENER.

DECISION OF R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBER E. BOYER: FEBRUARY 6, 1970.

1. THIS IS AN APPLICATION FOR CERTIFICATION BY THE APPLICANT AND BY THE INTERVENER.

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4. THE RESPONDENT STATED THAT IT WAS A PARTY TO AN AGREEMENT WITH LOCAL NO. 31, MARBLE MASONS, TILE SETTERS AND TERRAZZO MECHANICS, AFFILIATED WITH THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA (HEREINAFTER CALLED "LOCAL 31") DATED FEBRUARY 7, 1969, COVERING ALL JOURNEYMEN, MARBLE, TILE AND TERRAZZO MECHANICS AND THEIR APPRENTICES AND IMPROVERS IN, INTER ALIA, THE BOARD'S GEOGRAPHIC AREA NUMBER 8. HOWEVER, THE RESPONDENT STATED THAT IT WAS NOT SETTING UP THIS AGREEMENT AS A BAR TO THE PRESENT APPLICATIONS BY THE APPLICANT AND THE INTERVENER LOCAL 31, ALTHOUGH NOTIFIED OF THE APPLICATION AND OF THE HEARING IN THIS MATTER, FAILED TO APPEAR AT THE HEARING OR MAKE REPRESENTATIONS. THE RESPONDENT ADMITTED THAT IT HAD SIGNED THE AGREEMENT BECAUSE IT WAS REQUIRED TO DO SO BY GENERAL CONTRACTORS AND THAT IT HAD NOT MADE ANY INQUIRY INTO THE MEMBERSHIP POSITION OF LOCAL 31 AMONG ITS EMPLOYEES AT THE TIME IT SIGNED THE AGREEMENT. THE RESPONDENT FURTHER CONCEDED THAT IN ANY EVENT THE AGREEMENT DID NOT COVER THE EMPLOYEES FOR WHOM THE INTERVENER WAS SEEKING BARGAINING RIGHTS. NEITHER THE APPLICANT NOR THE INTERVENER TOOK ISSUE WITH THE REPRESENTATIONS OF THE RESPONDENT ON THE STATUS OF THE SAID AGREEMENT. HAVING REGARD TO THE EVIDENCE ADDUCED AT THE HEARING AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 31 DATED FEBRUARY 7, 1969, IS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(c) OF THE LABOUR RELATIONS ACT AND IS NOT A BAR TO THE APPLICATIONS FOR CERTIFICATION BY THE APPLICANT AND THE INTERVENER. REFERENCE ISMADE TO SECTION 45A OF THE LABOUR RELATIONS ACT.

5. THE APPLICANT INITIALLY SOUGHT A BARGAINING UNIT EXPRESSED IN TERMS OF ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN IN THE BOARD'S GEOGRAPHIC AREA NUMBER 8, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE AND SALES STAFF. DURING THE HEARING, HOWEVER, THE APPLICANT AMENDED ITS PROPOSED BARGAINING UNIT TO COVER THE TRADES AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION EXCEPT THOSE CLAIMED BY THE INTERVENER. ON THE DATE OF THE MAKING OF THE APPLICATION, THE RESPONDENT HAD IN ITS EMPLOY TRUCK DRIVERS, CERAMIC TILE SETTERS AND RESILIENT FLOOR LAYERS.

6. THE BOARD FURTHER FINDS THAT THE INTERVENER'S APPLICATION FOR CERTIFICATION IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

7. The Board further finds that all employees of the respondent engaged in the installation of resilient flooring in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

8. The Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in the bargaining unit defined in paragraph 7 at the time the application was made, were members of the intervener on December 29, 1969, the terminal date fixed for this application and the date which the Board determines, under section 77(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

9. A certificate will issue to the intervener with respect to the bargaining unit defined in paragraph 7.

10. At the hearing in this matter, the Board drew the applicant's attention to the provisions of section 90(b) of The Labour Relations Act. The applicant stated that it had neither entered into any collective agreements nor received any certificates from the Board. In these circumstances, it cannot be said that the applicant is a trade union "that according to established trade union practice pertains to the construction industry" within the meaning of section 90(b) of The Labour Relations Act (See Ben Bruinsma and Sons Limited case, OLRB Monthly Reports, February 1964, p. 647; Manor Carpenters case, OLRB Monthly Reports, January 1969, p. 1026; and Zachary De Vuono Limited case, OLRB Monthly Reports, July 1969, p. 493). The Board therefore further finds that the applicant's application for certification is not an application for certification within the meaning of section 92 of The Labour Relations Act.

11. The Board further finds, having regard to the circumstances of this case, the agreement of the parties to the appropriate geographic area and pursuant to section 6(1) of The Labour Relations Act, that all truck drivers and ceramic tile setters in the employ of the respondent in Metropolitan Toronto, The Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremenand persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

12. In support of its application for certification, the applicant filed thirty-three combination applications for membership and

RECEIPTS. THE MEMBERSHIP APPLICATION BEAR THE SIGNATURES OF THE PERSONS APPLYING FOR MEMBERSHIP. THE RECEIPTS, WHICH INDICATE THE PAYMENT OF ONE DOLLAR IN EACH CASE AND BEAR THE SIGNATURE OF THE COLLECTOR, ARE NOT COUNTERSIGNED BY THE PERSONS APPLYING FOR MEMBERSHIP BUT DO BEAR THE PRINTED NAMES OF THE PERSONS APPLYING FOR MEMBERSHIP. IT IS THE BOARD'S PRACTICE TO REQUIRE THAT ALL RECEIPTS FOR INITIATION FEES OR MONTHLY DUES BE BOTH SIGNED BY THE PAYER AND COUNTERSIGNED BY THE PAYEE, ON THE ASSUMPTION THAT THIS EXTRA PRECAUTION PROVIDES MORE ADEQUATE PROTECTION FOR THE BOARD AND FOR THE APPLICANT RELYING ON DOCUMENTARY EVIDENCE OF MEMBERSHIP - SEE CITY OF WINDSOR CASE, 53 CLLC, ¶ 17,050, C.L.S. 76-385. HAVING REGARD TO THE FACT THAT NONE OF THE RECEIPTS SUBMITTED BY THE APPLICANT INDICATING THE PAYMENT OF ONE DOLLAR ARE COUNTERSIGNED, THE BOARD FINDS THAT THE EVIDENCE OF MEMBERSHIP IS SUFFICIENTLY WEAKENED SO AS TO DISENTITLE THE APPLICANT TO CERTIFICATION WITHOUT A REPRESENTATION VOTE - SEE KENNAMETAL TOOLS & MANUFACTURING CO. LIMITED CASE, OLRB MONTHLY REPORTS, NOVEMBER 1963; P. 422. REFERENCE IS MADE TO SECTION 7(2) OF THE LABOUR RELATIONS ACT.

13. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 11. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 11 ON THE DATEHEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

14. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

15. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: FEBRUARY 6, 1970.

WHILE I HAVE SOME RESERVATIONS WITH RESPECT TO THE GEOGRAPHIC AREA GRANTED TO THE APPLICANT, IN VIEW OF THE AGREEMENT OF THE PARTIES TO SUCH AREA AND THE DECISION OF THE BOARD IN THE MANOR CARPENTERS CASE, OLRB MONTHLY REPORTS, JANUARY 1969, P. 1026, IT IS NOT MY INTENTION TO DISSENT HEREIN.

17122-69-R: UNITED STEELWORKERS OF AMERICA, C.I.O. (APPLICANT) V. ATLAS STEELS COMPANY A DIVISION OF RIO ALGOM MINES LIMITED (RESPONDENT) THE CANADIAN STEELWORKERS UNION, ATLAS DIVISION (INTERVENER #1) V. THE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 103 (INTERVENER #2).

BEFORE: J. D. O'Shea, Q.C., Vice-Chairman, and Board Members E. Boyer and R. W. Teagle.

APPEARANCES AT THE HEARING: T. E. Armstrong and O. Urbanovics for the applicant, C. G. Riggs, D. O. Gray and W. A. Yule for the respondent, Allan Goodman, Q.C., Hugh Ashenden and Sam Pine for intervener #1, M.A. Heeley and Wm. Cairns for intervener #2, L. J. Bourque for a group of employees.

DECISION OF THE BOARD: February 25, 1970.

1. The applicant has applied to be certified as bargaining agent for all employees of the respondent currently represented by intervener #1.

2. Intervener #2 has applied to be certified as bargaining agent for "all stationary engineers and helpers employed in the Respondent's steam plant, save and except Chief Engineer and those above that rank, (The above description includes the pump house situated at River Road.) situated in Welland, Ontario". The applicant and the respondent and intervener #1 opposed the application of intervener #2 and established that the stationary engineers and the pump station operators were included in a bargaining unit covered by a collective agreement between intervener #1 and the respondent since 1947. It further appears that intervener #2 had applied to carve out its craft bargaining unit in an earlier application in 1965 and the Board dismissed its application at that time on the grounds that the bargaining unit proposed by the applicant was inappropriate in view of the provisions of section 6(2) of The Labour Relations Act. It further appeared that an earlier application by the International Union of Operating Engineers had also been dismissed for the same reasons in 1963.

3. Intervener #2 failed to call any evidence to establish that the facts had changed since the Board dismissed its earlier application in 1965.

4. Intervener #1 called evidence which established that the stationary engineers and pump station operators had been bargained for as part of an overall bargaining unit since 1947 by intervener #1 and the stationary engineers and pump station operators enjoyed plant-wide seniority, the services of a union steward for their group, separate wage rates, and had taken advantage of job posting provisions contained in the collective agreement and generally enjoyed an equality of representation with the other employees in the bargaining unit.

5. FOR THE REASONS GIVEN IN THE ATLAS STEELS COMPANY LIMITED CASE, OLRB MONTHLY REPORT, AUGUST 1965, P. 367, SHELL CANADA LIMITED CASE, OLRB MONTHLY REPORT, SEPTEMBER 1969, P. 741, KITCHENS OF SARA LEE (CANADA) LTD. CASE, OLRB MONTHLY REPORT, OCTOBER 1969, P. 855, AND THE HISTORY OF COLLECTIVE BARGAINING ON BEHALF OF THE STATIONARY ENGINEERS AND PUMP STATION OPERATORS BY INTERVENER #1, THE BOARD IS OF OPINION THAT IT SHOULD EXERCISE ITS DISCRETION UNDER SECTION 6(2) OF THE LABOUR RELATIONS ACT AND FINDS THAT THE UNIT PROPOSED BY INTERVENER #2 IS INAPPROPRIATE IN THE CIRCUMSTANCES OF THIS CASE.

6. THE APPLICATION OF INTERVENER #2 IS THEREFORE DISMISSED.

7. THE BOARD DIRECTS THE REGISTRAR TO DESTROY THE BALLOTS CAST IN VOTING CONSTITUENCY #2 DESCRIBED IN THE BOARD'S DECISION DATED JANUARY 21, 1970 IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

8. THE SIGNATURE ON ONE OF THE MEMBERSHIP DOCUMENTS FILED BY THE APPLICANT IN THIS CASE DID NOT APPEAR TO CORRESPOND WITH THE SPECIMEN SIGNATURE FILED BY THE RESPONDENT FOR THAT PERSON. FOLLOWING AN INITIAL INQUIRY BY THE BOARD, THIS MATTER WAS LISTED FOR HEARING TO INQUIRE INTO THE CIRCUMSTANCES SURROUNDING THE SIGNING OF THE MEMBERSHIP CARD IN QUESTION.

9. THE EVIDENCE CLEARLY ESTABLISHED THAT THE EMPLOYEE ON WHOSE BEHALF THE CARD WAS SUBMITTED DID NOT SIGN THE CARD BUT HAD INSTRUCTED HIS WIFE TO COMPLETE THE CARD ONHIS BEHALF. THE WIFE IN ACCORDANCE WITH HIS INSTRUCTIONS, SIGNED HIS NAME ON THE CARD AND THE EMPLOYEE TOOK THE CARD TO WORK WHERE HE TURNED IT OVER TO ANOTHER EMPLOYEE TOGETHER WITH $1.00 AND REQUESTED THE OTHER EMPLOYEE TO TAKE THE CARD TO THE UNION OFFICE. THE SECOND EMPLOYEE SIGNED THE CARD AS COLLECTOR. THE EMPLOYEE ON WHOSE BEHALF THE CARD WAS SUBMITTED DID NOT INDICATE TO THE SECOND EMPLOYEE THAT HIS WIFE HAD SIGNED THE CARD ON HIS BEHALF AND THERE WAS NOTHING IN THE MANNER IN WHICH THE CARD WAS DELIVERED TO THE SECOND EMPLOYEE WHICH WOULD SUGGEST THAT THE CARD HAD NOT IN FACT BEEN SIGNED BY THE EMPLOYEE.

10. IN THESE CIRCUMSTANCES AND FOR THE REASONS GIVEN BY THE BOARD IN MARGARET'S FINE FOODS LIMITED CASE, FEBRUARY 19, 1970, BOARD FILE 16950-69-R, THE BOARD FINDS THAT THE EMPLOYEE IN QUESTION INTENDED THAT HIS WIFE SIGN THE MEMBERSHIP CARD ON HIS BEHALF AND WHEN THE MEMBERSHIP CARD WAS SUBMITTED TO THE COLLECTOR WITH $1.00, WITHOUT COMMENT, HE MUST BE CONSIDERED TO HAVE TREATED THE SIGNATURE ON THE CARD AS HIS OWN. IN SUCH CIRSUMSTANCES, WE ARE PREPARED TO GIVE EFFECT TO THE MEMBERSHIP CARD SUBMITTED BY THE

APPLICANT ON HIS BEHALF. AGAIN, SINCE THE APPLICANT'S REPRESENTATIVES HAD NO REASON TO CHALLENGE THE SIGNATURE ON THE CARD AND HAD ACCEPTED THE CARD IN GOOD FAITH, THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, FORM 8, CANNOT BE SAID TO BE DEFECTIVE BY REASON OF THE FACT THAT THERE HAS BEEN NO DISCLOSURE WITH RESPECT TO THE FACT THAT THE CARD WAS SIGNED BY THE EMPLOYEE'S WIFE ON HIS BEHALF.

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13. THE BOARD FURTHER FINDS THAT THE STATIONARY ENGINEERS, PERSONS PRIMARILY ENGAGED AS THEIR HELPERS, AND PUMP STATION OPERATORS EMPLOYED BY THE RESPONDENT AT WELLAND ARE INCLUDED IN THE BARGAINING UNIT AND WERE ELIGIBLE TO VOTE IN VOTING CONSTITUENCY #1. THE BOARD THEREFORE DIRECTS THAT THE SEGREGATED BALLOTS CAST BY THE STATIONARY ENGINEERS, PERSONS PRIMARILY ENGAGED AS THEIR HELPERS, AND PUMP STATION OPERATORS IN VOTING CONSTITUENCY #1 BE PLACED IN THE BALLOT BOX.

14. THE BOARD IS SATISFIED THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

15. THE BOARD FURTHER DIRECTS THE REGISTRAR TO CAUSE THE BALLOTS CAST BY ALL THOSE ELIGIBLE TO VOTE IN VOTING CONSTITUENCY #1 TO BE COUNTED AND REPORT TO THE BOARD.

17127-69-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. THE ELGIN COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: JOHN M. ASKIN, CHARLES P. DAVIDSON FOR THE APPLICANT; G. A. MCNABB Q.C., A.F. DUNN FOR THE RESPONDENT.

DECISION OF THE BAORD: FEBRUARY 20, 1970.

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2. THE RESPONDENT CAME INTO EXISTENCE ON JANUARY 1, 1969, PURSUANT TO THE PROVISIONS OF THE SEPARATE SCHOOLS AMENDMENT ACT, 1968, S.O. 1968, c. 125, WHICH UNITED FIVE ROMAN CATHOLIC SEPARATE SCHOOL BOARDS WITHIN THE COUNTY OF ELGIN TO CREATE THE PRESENT RESPONDENT. ONE OF THE FORMER BOARDS WAS THE COMBINED ROMAN CATHOLIC SEPARATE BOARD OF ST. THOMAS. IN REPLY TO THIS APPLICATION FOR

CERTIFICATION THE RESPONDENT RAISED AS A BAR AN AGREEMENT BETWEEN THE COMBINED R. C. SEPARATE SCHOOLS OF ST. THOMAS AND THE COMBINED R. C. SEPARATE SCHOOLS OF ST. THOMAS CARETAKER'S ASSOCIATION (HEREINAFTER CALLED THE "ASSOCIATION"). IN THIS AGREEMENT THE COMBINED R. C. SEPARATE SCHOOLS OF ST. THOMAS RECOGNIZED THE ASSOCIATION AS THE EXCLUSIVE BARGAINING AGENCY FOR ALL THE EMPLOYEES OF ITS CARETAKING STAFF. THIS AGREEMENT WAS ENTERED INTO BY THE ASSOCIATION AND THE COMBINED R. C. SEPARATE SCHOOLS OF ST. THOMAS ON NOVEMBER 28, 1968, AND WAS STATED AS BEING EFFECTIVE ON JANUARY 1, 1969, UNTIL DECEMBER 31, 1971.

3. THE APPLICANT TOOK THE POSITION AT THE HEARING THAT THE ASSOCIATION WAS NOT A BONA FIDE TRADE UNION WITHIN THE MEANING OF THE LABOUR RELATIONS ACT AND THAT THE AGREEMENT REFERRED TO WAS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. THE RESPONDENT MAINTAINED THAT THE ASSOCIATION WAS STILL IN EXISTENCE, ALTHOUGH IT ADMITTED THAT IT DID NOT KNOW WHETHER THE ASSOCIATION HAD A CONSTITUTION. THE ASSOCIATION WAS NOT REPRESENTED AT THE HEARING, BUT WAS SUBSEQUENTLY SERVED WITH A COPY OF THE APPLICATION FOR CERTIFICATION AND A COPY OF THE RESPONDENT'S REPLY. THE ASSOCIATION WAS ALSO REQUESTED TO INFORM THE BOARD WHETHER IT CLAIMED TO REPRESENT THE EMPLOYEES AFFECTED BY THE APPLICATION, AND WHETHER IT HAD ANY REPRESENTATIONS WHICH IT WISHED TO MAKE TO THE BOARD.

THE ASSOCIATION, THROUGH ONE HENRY TOLAND, INFORMED THE BOARD THAT THE ASSOCIATION WAS NEVER SET UP WITH A CONSTITUTION OR PROPERLY ELECTION (SIC) OFFICIALS. MR. TOLAND STATED HE WAS ASKED TO BE THE SPOKESMAN FOR THE GROUP OF EMPLOYEES. THE APPLICANT AND RESPONDENT WERE SERVED WITH COPIES OF MR. TOLAND'S REPRESENTATIONS AND WERE INFORMED THAT IF THEY HAD ANY COMMENTS THEREON TO INFORM THE REGISTRAR. THE RESPONDENT IN ITS REPLY TO THE BOARD DID NOT DENY THAT THE ASSOCIATION WAS NEVER SET UP WITH A CONSTITUTION OR PROPERLY ELECTED OFFICIALS AND ADMITTED THAT IT HAD NEVER CHECKED INTO SUCH MATTERS. THE BOARD HAS REQUIRED THAT AN ORGANIZATION CLAIMING TO BE A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT DEMONSTRATE THAT IT IS A VIABLE ENTITY. THIS IS USUALLY ESTABLISHED BY SOME FORM OF CONSTITUTION AND WITH THE MEMBERS ELECTING OFFICERS TO ACT ON BEHALF OF THE ORGANIZATION. SEE ALCAN UNIVERSAL HOMES DIVISION OF ALCAN DESIGN HOMES LIMITED CASE, OLRB MONTHLY REPORTS, APRIL 1969, P. 55. HAVING REGARD TO THE EVIDENCE BEFORE THE BOARD AND TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE ASSOCIATION NEVER EXISTED AS AN ORGANIZATION OF EMPLOYEES SEPARATE AND APART FROM ITS INDIVIDUAL MEMBERS. ACCORDINGLY, THE AGREEMENT BETWEEN THE COMBINED R. C. SEPARATE SCHOOLS OF ST. THOMAS AND THE COMBINED R. C. SEPARATE SCHOOLS OF ST. THOMAS CARETAKERS' ASSOCIATION, ENTERED INTO ON NOVEMBER 28, 1968, IS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(C) OF THE LABOUR RELATIONS ACT, SINCE A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT

WAS NOT A PARTY TO IT. THE BOARD FURTHER FINDS THAT THE SAID AGREEMENT IS NOT A BAR TO THE PRESENT APPLICATION FOR CERTIFICATION.

4. THE RESPONDENT ALSO RAISED THE QUESTION OF THE APPLICANT IN THE NATURE OF A SUCCESSOR OF THE ASSOCIATION AND CONCLUSIVELY PRESUMED TO HAVE ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF ITS PREDECESSOR THE ASSOCIATION. THE APPLICANT IS, HOWEVER, NOT CLAIMING BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION TO BE THE SUCCESSOR OF A TRADE UNION THAT AT THE TIME OF THE MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION WAS THE BARGAINING AGENT OF A UNIT OF EMPLOYEES OF AN EMPLOYER UNDER SECTION 47 OF THE LABOUR RELATIONS ACT. RATHER, THE APPLICANT IS SEEKING BARGAINING RIGHTS BY WAY OF AN APPLICATION FOR CERTIFICATION UNDER SECTION 5(1) OF THE LABOUR RELATIONS ACT.

5. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

17143-69-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, CLC (APPLICANT) v. CANADIAN DRESSED MEATS LIMITED (RESPONDENT) v. CANADIAN DRESSED MEATS EMPLOYEES' ASSOCIATION (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: CHARLES BORSK AND VINCENT GENTILE FOR THE APPLICANT, J. P. SANDERSON, Q. P. TARASUK AND T. K. LAMONT FOR THE RESPONDENT, GORDON G. DICKSON FOR THE INTERVENER.

DECISION OF THE BOARD: FEBRUARY 26, 1970.

1. THIS MATTER CAME ON FOR HEARING TO INQUIRE INTO THE TIMELINESS OF THE APPLICATION AND TO HEAR THE REPRESENTATIONS OF THE PARTIES CONCERNING THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT UNION IN LIGHT OF THE METROPOLITAN LIFE INSURANCE COMPANY v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 ET AL., 70 CLLC ¶14, 008.

2. THE BOARD FINDS THAT THIS APPLICATION WAS MADE ON DECEMBER 31, 1969, WHICH WAS THE EXPIRY DATE OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER, AND THE APPLICATION IS ACCORDINGLY TIMELY.

3. AT THE HEARING IN THIS MATTER, THE APPLICANT ADDUCED EVIDENCE WHICH ESTABLISHED THAT THE INTERNATIONAL EXECUTIVE BOARD OF THE APPLICANT HAD, PRIOR TO THE DATE OF THE MAKING OF THIS APPLICATION, WAIVED THE PROVISIONS OF THE APPLICANT'S CONSTITUTION BY GRANTING DISPENSATION WITH RESPECT TO THE PAYMENT OF INITIATION FEES AND MONTHLY DUES. SINCE THIS DISPENSATION WAS GRANTED PRIOR TO THE COMMENCEMENT OF THE APPLICANT'S ORGANIZATIONAL CAMPAIGN IN THIS MATTER, IT ACCORDINGLY APPLIED TO THE MEMBERSHIP EVIDENCE WHICH WAS FILED BY THE APPLICANT AND THE BOARD IS THEREFORE SATISFIED ON THE EVIDENCE THAT THE PERSONS CLAIMED BY THE APPLICANT AS MEMBERS WERE MEMBERS OF THE APPLICANT IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THE APPLICANT'S CONSTITUTION AS OF THE DATE THE APPLICATION WAS MADE.

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17171-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, CLC (APPLICANT) v. THE ATTORNEY GENERAL OF CANADA ON BEHALF OF HER MAJESTY THE QUEEN IN RIGHT OF CANADA (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: VICTOR PATHE AND WILLIAM FALLS FOR THE APPLICANT; L. R. OLSSON FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 11, 1970.

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2. HAVING REGARD TO THE EVIDENCE AND THE REPRESENTATIONS OF COUNSEL, THE BOARD FINDS THAT CANADIAN FORCES EXCHANGES SYSTEM IS A NAME COVERING AN OPERATION OF THE CROWN IN RIGHT OF CANADA AND ONE WHICH THEREFORE IS OUTSIDE THE JURISDICTION OF THE ONTARIO LABOUR RELATIONS BOARD.

3. THE PROCEEDINGS ARE ACCORDINGLY TERMINATED.

17202-69-R: The United Brotherhood of Carpenters & Joiners of America (Applicant) v. MATTAGAMI LAKE MINES LIMITED (NO PERSONAL LIABILITY) (Respondent).

BEFORE: R. A. Furness, Vice-Chairman and Board Members E. Boyer and R. W. Teagle.

APPEARANCES AT THE HEARING: L. A. MacLean, W. Sherman for the applicant; R. N. Gilmore, J. Peat for the respondent.

DECISION OF THE BOARD: February 27, 1970.

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3. The applicant is seeking bargaining rights for a group of the respondent's employees engaged in the construction of camp facilities at its mining property at Sturgeon Lake in North Western Ontario. The respondent raised four issues in connection with this application for certification, namely: (1) that the respondent's sole business is to find, develop and operate mines and that it is not an "employer" as defined in section 90(a) of The Labour Relations Act; (2) that the nature of the work performed by the employees affected by this application for certification does not fall within the definition of "construction industry" as defined in section 1(1)(da) of The Labour Relations Act; (3) that when the work performed by the employees affected by this application for certification is completed, the employees will be terminated, and (4) that the size and composition of any work force which a company may employ to develop and operate a mine on the site where the camp facilities are being constructed is unknown at this time and will not be known for many months in the future.

4. With regard to the first and second issues raised by the respondent, the evidence establishes that the construction of camp facilities involves the assembling of mobile trailers. Two units of three trailers are being assembled to provide accommodation for employees and one unit of four trailers is also being assembled to provide a kitchen and dining area. The units are connected together, placed on concrete blocks and then utilities are connected to the units. Counsel for the respondent argued that the fact that the respondent was assembling these units did not constitute a "construction industry" activity within the meaning of section 1(1)(da) of The Labour Relations Act and that, in any event, it was not the intention of the respondent to be in the business of doing construction work in the future. Counsel for the respondent emphasized that the present assemply work was merely a preliminary stage before the respondent invited bids on and contracted out the job of construcing a camp to house five hundred employees, the construction of a concentrator and services' building, the stripping of the overburden and the construction of the mine's offices.

5. IN REALITY, THE NATURE OF THE WORK PERFORMED CONSISTS OF THE JOINING TOGETHER OR THE CONSTRUCTION OF SEVERAL MOBILE UNITS TO FORM STRUCTURES AT THE SITE WHERE THE STRUCTURES ARE TO REMAIN DURING THEIR USE. THE COMPONENTS OF THE STRUCTURES ERECTED AT THE SITE ARRIVE IN A CONDITION WHERE THEY MAY READILY BE USED AS ACCOMMODATION. IT IS NEVERTHELESS NECESSARY TO CONSTRUCT LARGER UNITS FROM THESE SEPARATE COMPONENTS AND TO ERECT THESE UNITS ON CONCRETE BLOCKS. WITH REGARD TO THE FACT THAT THESE UNITS ARE INTENDED FOR TEMPORARY USE ONLY, THE BOARD NOTES THAT THE DEFINITION OF "CONSTRUCTION INDUSTRY" IN SECTION 1(1)(DA) OF THE LABOUR RELATIONS ACT CONTAINS NO LIMITATION ON THE DURATION OR PERMANENCE OF THE BUILDINGS, STRUCTURES, ROADS, SEWERS, WATER OR GAS MAINS, PIPE-LINES, TUNNELS, BRIDGES, CANALS OR OTHER WORKS AT THE SITE THEREOF.

IT IS ALSO THE RESPONDENT'S CONTENTION THAT IT IS NOT OPERATING THE BUSINESS IN THE CONSTRUCTION INDUSTRY AND THAT, IN ANY EVENT, IT IS NOT THE INTENTION OF THE RESPONDENT TO BE IN THE BUSINESS OF DOING CONSTRUCTION WORK IN THE FUTURE. THERE IS NO REASON WHY THE RESPONDENT MAY NOT SUBSEQUENTLY CHANGE ITS POLICY OR CORPORATE MIND AND AGAIN ENGAGE IN CONSTRUCTION WORK. WHETHER THE RESPONDENT DOES OR DOES NOT UNDERTAKE CONSTRUCTION WORK IN THE FUTURE IS A MATTER OF SPECULATION. THIS APPLICATION THEREFORE, MUST BE DEALT WITH ON THE BASISTHAT THE RESPONDENT, A CORPORATION INVOLVED IN THE PURSUIT OF FINDING, DEVELOPING AND OPERATING MINES, IS ENGAGED FOR THE FIRST TIME IN CONSTRUCTING A STRUCTURE FOR HOUSING EMPLOYEES IN CONNECTION THEREWITH.

THE BOARD HAS DEALT WITH SUBSTANTIALLY SIMILAR SITUATIONS IN THE TOPS MARINA MOTOR HOTEL CASE, 64 CLLC ¶16,004, OLRB MONTHLY REPORTS JANUARY 1964 P. 583, AND IN THE CANADIA NIAGARA FALLS LIMITED CASE, OLRB MONTHLY REPORTS, APRIL 1966, P. 44. THE ARGUMENTS RAISED BY COUNSEL FOR THE RESPONDENT ARE SIMILAR TO THOSE CONSIDERED BY THE BOARD IN THE TWO CASES CITED ABOVE AND THE BOARD SEES NO REASON TO DEPART FROM THE PRINCIPLES ESTABLISHED THEREIN. THE BOARD THEREFORE FURTHER FINDS THAT THE RESPONDENT IS AN EMPLOYER OPERATING A BUSINESS IN THE CONSTRUCTION INDUSTRY WITHIN THE MEANING OF SECTIONS 90(A) AND 1(1)(DA) OF THE LABOUR RELATIONS ACT. HAVING REGARD, THEREFORE, TO ALL THE ABOVE CONSIDERATIONS, THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FALLING WITHIN SECTION 92 OF THE LABOUR RELATIONS ACT.

6. WITH REFERENCE TO THE THIRD POINT RAISED BY THE RESPONDENT, THE FACT THAT THE JOB AFFECTED BY THE APPLICATION MAY BE FINISHED OR MAY BE CLOSE TO TERMINATION AFTER THE FILING OF AN APPLICATION FOR CERTIFICATION, IS NOT A FACTOR WHICH THE BOARD TAKES INTO CONSIDERATION IN REACHING A DECISION ON SUCH AN APPLICATION. REFERENCE IS MADE TO THE NADECO LIMITED CASE, OLRB MONTHLY REPORTS, FEBRUARY 1964, P. 608. IN CONNECTION WITH THE FOURTH POINT RAISED BY THE

RESPONDENT, THE BOARD NOTES THAT UNDER THE PROVISIONS OF SECTION 92(2) OF THE LABOUR RELATIONS ACT, THE BOARD NEED NOT HAVE ANY REGARD TO ANY INCREASE IN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AFTER THE APPLICATION WAS MADE. HOWEVER, THE BOARD THINKS IT SHOULD BE MADE CLEAR THAT IT IS NOT THE BOARD'S INTENTION TO INCLUDE IN THE PRESENT BARGAINING UNIT CARPENTERS AND CONSTRUCTION LABOURERS WHO MAY SUBSEQUENTLY BE EMPLOYED BY THE RESPONDENT TO DO ORDINARY MAINTENANCE WORK ONCE THE CONSTRUCTION OF THE CAMP FACILITIES IS COMPLETED.

7. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, WHILE ENGAGED IN CONSTRUCTION PROJECTS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT CARPENTERS AND CONSTRUCTION LABOURERS WHO MAY SUBSEQUENTLY BE EMPLOYED BY THE RESPONDENT TO DO ORDINARY MAINTENANCE WORK WHEN THE PRESENT PROJECT IS COMPLETED ARE NOT INCLUDED IN THE BARGAINING UNIT.

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9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

17228-69-R: DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (APPLICANT) v. DOMINION BRIDGE COMPANY LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: L. H. ROSEN FOR THE APPLICANT, N. L. MATHEWS, Q.C., E. R. GRAYDON, H. S. TAMAKI AND A. P. TARASUK FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 23, 1970.

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3. IN SUPPORT OF THE BARGAINING UNIT OF EMPLOYEES OF THE RESPONDENT FOR WHICH THE APPLICANT IS APPLYING FOR CERTIFICATION, THE APPLICANT FILED EVIDENCE OF MEMBERSHIP IN THE FORM OF COMBINATION APPLICATION FOR MEMBERSHIP IN THE APPLICANT AND RECEIPTS THAT SHOW THE PAYMENT OF ONE DOLLAR ON ACCOUNT OF INITIATION FEES.

4. COUNSEL FOR THE RESPONDENT SUBMITS THAT THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT DOES NOT FULFIL THE REQUIREMENTS OF ITS OWN CONSTITUTION EITHER WITH RESPECT TO THE PAYMENT OF INITIATION FEES OR THE PROCEDURE WHICH IT IS NECESSARY TO FOLLOW IN ORDER FOR PERSONS TO BE ACCEPTED INTO MEMBERSHIP IN THE UNION. COUNSEL ARGUES THAT IN THESE CIRCUMSTANCES, THE APPLICANT HAS FAILED TO MEET THE STANDARDS FOR MEMBERSHIP IN A TRADE UNION AS SET OUT IN THE JUDGMENT OF THE SUPREME COURT OF CANADA IN THE METROPOLITAN LIFE INSURANCE COMPANY CASE, 70 CLLC ¶14,008.

5. THE REPRESENTATIVE OF THE APPLICANT AT THE BOARD HEARING OF THE APPLICATION CONCEDED THAT THE EVIDENCE OF MEMBERSHIP FILED IN THE INSTANT APPLICATION DID NOT MEET THE REQUIREMENTS OF THE APPLICANT'S CONSTITUTION. HE ADVISED THE BOARD, HOWEVER, THAT THE APPLICANT WAS TAKING IMMEDIATE STEPS TO REMEDY THIS SITUATION. SUBSEQUENTLY, THERE WAS RECEIVED BY THE BOARD ON FEBRUARY 9, 1970 A LETTER OVER THE SIGNATURE OF THE INTERNATIONAL PRESIDENT OF THE AMERICAN FEDERATION OF TECHNICAL ENGINEERS IN WHICH HE STATES THAT "HE HAS DIRECTED THAT THE NORMAL INITIATION FEES BE WAIVED, AND THAT THE USUAL FEES UNDER THE PROVINCES' LABOUR LAWS SHALL BE THE GUIDING PRINCIPLE OF OUR UNION IN ORGANIZING IN CANADA".

6. SECTION 48(1) OF THE BOARD'S RULES OF PROCEDURE PROVIDES THAT "EVIDENCE OF MEMBERSHIP IN A TRADE UNION...SHALL NOT BE ACCEPTED BY THE BOARD ON AN APPLICATION FOR CERTIFICATION...UNLESS THE EVIDENCE IS IN WRITING...AND IS FILED NOT LATER THAN THE TERMINAL DATE OF THE APPLICATION". THE TERMINAL DATE FOR THE INSTANT APPLICATION WAS JANUARY 28, 1970. SINCE THE LETTER OF THE INTERNATIONAL PRESIDENT WAS RECEIVED AFTER THAT DATE, APART FROM ANY OBJECTIONS THAT MIGHT BE TAKEN AS TO THE ADEQUACY OF THE LETTER, THE BOARD IS NOT PREPARED TO ACCEPT IT AS EVIDENCE WHICH WOULD ESTABLISH THAT THE PERSONS CLAIMED BY THE APPLICANT AS MEMBERS, IN FACT, WERE MEMBERS ON THE TERMINAL DATE. (MARGARET'S FINE FOODS LIMITED CASE, DATED FEBRUARY 19, 1970, BOARD FILE NO. 16950-69-R.)

7. FOR THE REASONS GIVEN IN THE DECISION OF THE BOARD IN THE MARGARET'S FINE FOODS LIMITED CASE, THE BOARD IS NOT SATISFIED THAT THE EVIDENCE FILED BY THE APPLICANT BY THE TERMINAL DATE IN THE INSTANT CASE MEETS THE TEST OF THE APPLICANT'S OWN CONSTITUTION AS REQUIRED BY THE METROPOLITAN LIFE INSURANCE COMPANY JUDGMENT (SUPRA).

8. THE APPLICATION ACCORDINGLY IS DISMISSED.

INDEXED ENDORSEMENTS - TERMINATION

16107-69-R: THE LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 506 (APPLICANT) v. THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (RESPONDENT) v. KINGSWAY PLASTERING CO. LTD. (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE, J. WATERMAN AND T. NEIL FOR THE APPLICANT, R. B. CUMINE AND A.BURIGANA FOR THE RESPONDENT, R. B. STATTON, R. D. PERKINS AND A. TESOLIN FOR THE INTERVENER.

DECISION OF THE BOARD: FEBRUARY 6, 1970.

1. THIS IS AN APPLICATION MADE UNDER SECTION 45A OF THE LABOUR RELATIONS ACT.

2. THE APPLICANT IS APPLYING TO THE BOARD FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF THE INTERVENER IN THE BARGAINING UNIT COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER DATED FEBRUARY 22, 1968. IN THE ALTERNATIVE, THE APPLICANT IS SEEKING A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THOSE EMPLOYEES IN THE BARGAINING UNIT CLASSIFIED AS PLASTERERS' HELPERS OR TRAINEES.

3. THE EVIDENCE OF THE HISTORY OF THE BARGAINING RELATIONSHIP BETWEEN THE RESPONDENT AND THE INTERVENER IS SET OUT BELOW. ANGELO BURIGANA, THE PRESENT BUSINESS MANAGER OF THE RESPONDENT, TESTIFIED THAT THE RESPONDENT WAS FORMED IN 1957. FROM THEN UNTIL 1968, BURIGANA WAS A BUSINESS AGENT FOR THE RESPONDENT. IN THE LATTER YEAR, HE BECAME THE BUSINESS MANAGE, SUCCEEDING ARTHUR COLLINS WHO HAD BEEN THE BUSINESS MANAGER OF THE RESPONDENT FROM ITS INCEPTION UNTIL THE LOCAL WAS PLACED UNDER TRUSTEESHIP BY THE PARENT INTERNATIONAL UNION IN 1965.

4. THE EVIDENCE OF BURIGANA IS THAT THE RESPONDENT AND THE INTERVENER HAVE HAD A CONTINUOUS COLLECTIVE BARGAINING RELATIONSHIP FROM 1957 TO THE PRESENT TIME AND HAVE ENTERED INTO A SERIES OF COLLECTIVE AGREEMENTS COVERING JOURNEYMEN PLASTERES AND THEIR APPRENTICES. ORIGINALS OR COPIES OF THE FIVE COLLECTIVE AGREEMENTS WHICH SPAN THE ENTIRE PERIOD WERE FILED AS EXHIBITS WITH THE BOARD. BURIGANA FURTHER TESTIFIED THAT DURING THE PERIOD FROM 1957 TO 1962, THE RESPONDENT ALSO REPRESENTED PLASTERERS' HELPERS. THERE WAS FILED WITH THE BOARD AS AN EXHIBIT AN AGREEMENT DATED APRIL 15, 1958 BETWEE

THE UNITED LATHING & PLASTERING CONTRACTORS ASSOCIATION OF TORONTO AND THE PLASTERER'S HELPERS UNION 117 OF TORONTO . THIS AGREEMENT PURPORTS TO BE EFFECTIVE UNTIL APRIL 30, 1959. NO AGREEMENT COVERING PLASTERERS' HELPERS WAS FILED WHICH COVERS ANY SUCCEEDING YEARS. ACCORDING TO BURIGANA, IN 1962 AN UNDERSTANDING WAS REACHED WITH THE LABOURERS' UNION WHEREBY LOCAL 117 RELINQUISHED ANY JURISDICTIONAL CLAIM OVER PLASTERERS' HELPERS OR TRAINEES AND CONCEDED THE JURISDICTION TO THE LABOURERS. BURIGANA'S TESTIMONY IS THAT BETWEEN 1962 AND 1968, THE RESPONDENT CEASED TO ORGANIZE OR REPRESENT ANY PLASTERERS' HELPERS OR TRAINEES. IN 1968, HOWEVER, THE RESPONDENT AGAIN COMMENCED TO SIGN PLASTERERS' HELPERS INTO MEMBERSHIP BECAUSE, ACCORDING TO BURIGANA, THE LABOURERS HAD FAILED TO REPRESENT THEIR INTERESTS.

5. THE EVIDENCE OF ARTHUR COLLINS IS THAT THE RESPONDENT FROM ITS BEGINNING ONLY REPRESENTED JOURNEYMEN PLASTERERS AND THEIR APPRENTICES AND THAT AT NO TIME WAS LOCAL 117 THE BARGAINING AGENT FOR PLASTERERS' HELPERS OR TRAINEES. HE TESTIFIED, HOWEVER, THAT THE RESPONDENT HAD MEMBERSHIP CARDS PRINTED IN A BODY KNOWN AS THE PLASTERER'S HELPERS UNION 117 OF TORONTO AND THAT THE RESPONDENT HAD SIGNED PLASTERERS' HELPERS OR TRAINEES INTO MEMBERSHIP IN THIS PURPORTED ORGANIZATION. COLLINS FURTHER TESTIFIED THAT THE RESPONDENT COLLECTED MEMBERSHIP DUES FROM THE HELPERS OR TRAINEES WHO SIGNED CARDS. HE CONVEYED THE IMPRESSION BY HIS EVIDENCE, HOWEVER, THAT NO SUCH ORGANIZATION AS THE PLASTERER'S HELPERS UNION 117 OF TORONTO EVER FORMALLY CAME INTO EXISTENCE. ACCORDING TO COLLINS, THE RESPONDENT HELPED THE TRAINEES TO SECURE EMPLOYMENT BUT AT NO TIME REPRESENTED THEM IN COLLECTIVE BARGAINING. WE WOULD MENTION THAT THE MEMBERSHIP CARDS USED BY THE RESPONDENT ARE PRINTED BY THE PARENT INTERNATIONAL UNION.

6. COLLINS TESTIFIED THAT THE PARENT BODY, THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, WAS NOT INTERESTED IN ASSERTING ANY JURISDICTIONAL CLAIM TO REPRESENT PERSONS IN THE CLASSIFICATION OF PLASTERERS' HELPER OR TRAINEE. HIS EVIDENCE IN THIS RESPECT SEEMS TO BE CONFIRMED BY THE CONSTITUTION OF THE PARENT UNION WHICH WAS FILED AS AN EXHIBIT. SECTION 4(F) OF THE CONSTITUTION PROVIDES THAT ONLY MEMBERS OF A LOCAL UNION WHO ARE CLASSIFIED AS PLASTERERS, CEMENT MASONS AND SHOP HANDS MAY REPRESENT A LOCAL UNION AT CONVENTIONS OF THE PARENT INTERNATIONAL UNION. IN OTHER WORDS, PLASTERERS' HELPERS OR TRAINEES COULD NOT REPRESENT A LOCAL UNION AND THEREFORE COULD NOT HOLD ANY OFFICES IN THE INTERNATIONAL UNION. SECTION 31 OF THE CONSTITUTION PROVIDES SOLELY FOR THE CHARTERING OF LOCAL UNIONS TO REPRESENT ONLY ONE PRIMARY CLASSIFICATION OR MORE THAN ONE PRIMARY

CLASSIFICATION. THE PRIMARY CLASSIFICATIONS ARE PLASTERERS, CEMENT MASONS AND SHOP HANDS. PLASTERERS' HELPER IS NOT A PRIMARY CLASSIFICATION. MOREOVER, SECTION 28(A) OF THE CONSTITUTION CONTEMPLATES ONLY APPLICATIONS FOR MEMBERSHIP BEING MADE BY JOURNEYMEN PLASTERERS, CEMENT MASONS AND SHOP HANDS AND THEIR APPRENTICES. FURTHER, SECTION 125 OF THE CONSTITUTION PROVIDES THAT NO APPLICANT FOR MEMBERSHIP AS A JOURNEYMAN UNDER ONE OF THE FULL PRIMARY CLASSIFICATIONS SHALL BE INITIATED INTO ANY LOCAL UNION UNLESS AND UNTIL HE HAS COMPLETED HIS TERM OF APPRENTICESHIP TO THE TRADE. PLASTERERS' HELPERS OR TRAINEES HAVE NO TRAINING AS INDENTURED APPRENTICES.

7. AT THE ORIGINAL HEARING OF THIS APPLICATION ON MAY 14, 1969, THE BOARD WAS ADVISED THAT THE RESPONDENT HAD NO LOCAL CONSTITUTION. BY LETTER DATED MAY 26, 1969, UPON INSTRUCTIONS FROM THE BOARD, THE REGISTRAR DIRECTED THE RESPONDENT TO FILE ANY CERTIFICATES ISSUED BY THE BOARD GRANTING BARGAINING RIGHTS TO THE RESPONDENT FOR ANY UNIT OF EMPLOYEES OF THE INTERVENER TOGETHER WITH THE ORIGINAL COPIES OF ALL COLLECTIVE AGREEMENTS WHICH WERE OR ARE BINDING ON THE RESPONDENT AND THE INTERVENER DURING THE PERIOD FROM 1958 TO THE TIME THE RESPONDENT AND INTERVENER EXECUTED THE AGREEMENTS DATED DECEMBER 15, 1967 (WHICH WILL BE REFERRED TO LATER) AND FEBRUARY 22, 1968.

8. BY LETTER DATED JUNE 3, 1969, COUNSEL FOR THE RESPONDENT ADVISED THAT NO CERTIFICATES HAD BEEN ISSUED BY THE BOARD. UNDER COVER OF THAT LETTER, HE ALSO FILED THE FOLLOWING COLLECTIVE AGREEMENTS: (1) A COPY OF AN AGREEMENT EFFECTIVE FROM OCTOBER 9, 1957 TO APRIL 30, 1959 BETWEEN THE RESPONDENT AND THE UNITED LATHING AND PLASTERING CONTRACTORS ASSOCIATION (HEREINAFTER REFERRED TO AS THE ASSOCIATION) TO WHICH THE INTERVENER IS A SIGNATORY. THE AGREEMENT COVERS ALL JOURNEYMEN PLASTERERS AND APPRENTICES. (2) AN AGREEMENT DATED MAY 1, 1959 BETWEEN THE ASSOCIATION AND THE RESPONDENT EFFECTIVE FROM MAY 1, 1959 TO APRIL 30, 1961 TO WHICH THE INTERVENER IS A SIGNATORY COVERING ALL JOURNEYMEN PLASTERERS AND APPRENTICES. (3) AN AGREEMENT SHOWING ONLY THE YEAR 1962, EFFECTIVE FROM THE DATE OF MAKING TO APRIL 30, 1963, BETWEEN THE RESPONDENT AND THE INTERVENER COVERING JOURNEYMEN PLASTERERS AND APPRENTICES. ATTACHED THERETO IS A ONE-PAGE UNDATED AGREEMENT EXECUTED BY THE PARTIES EXTENDING THE 1962 AGREEMENT TO APRIL 30, 1965. (4) AN AGREEMENT BETWEEN THE ASSOCIATION AND THE RESPONDENT TO WHICH THE INTERVENER IS A SIGNATORY DATED MAY 30, 1966, EFFECTIVE FROM THE DATE OF SIGNING TO APRIL 30, 1968, COVERING JOURNEYMEN PLASTERERS AND

APPRENTICES. (5) THE CURRENT AGREEMENT DATED FEBRUARY 22,1968 WHICH IS BEING CHALLENGED BY THE APPLICANT. THIS AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WHICH IS EFFECTIVE FROM MAY 1, 1968 TO APRIL 30, 1971 PURPORTS TO COVER ALL EMPLOYEES OF THE INTERVENER. THIS IS THE SERIES OF FIVE COLLECTIVE AGREEMENTS REFERRED TO IN PARAGRAPH 4.

9. IN HIS LETTER OF JUNE 3, 1969, COUNSEL FOR THE RESPONDENT INFORMED THE BOARD THAT HE HAD BEEN ADVISED BY HIS CLIENT THAT "AT A GENERAL MEETING OF LOCAL 117 HELD ON OCTOBER 8, 1968 A LOCAL CONSTITUTION AND BY-LAWS WHICH APPARENTLY HAVE BEEN IN EFFECT FOR SOME YEARS WERE REAFFIRMED DUE TO THE FACT THAT THE ORIGINAL DOCUMENTS HAD BEEN DESTROYED IN A FIRE AT THE LOCAL HEADQUARTERS WHICH HAD OCCURRED SOME TIME PREVIOUSLY". COUNSEL ENCLOSED WITH HIS LETTER A COPY OF BOTH THE MINUTES OF THE MEETING OF OCTOBER 8, 1968 AND A COPY OF THE CONSTITUTION, BY-LAWS AND WORKING RULES OF THE RESPONDENT.

10. THE MINUTES OF THE OCTOBER 8, 1968 MEETING FORM PART OF THE MINUTES OF THE GENERAL MEETINGS OF THE RESPONDENT CONTAINED IN A THREE-RING LOOSE LEAF BOOK. THE MINUTE BOOK CONTAINS MINUTES COVERING THE MONTHLY GENERAL MEETINGS OF THE RESPONDENT FROM AUGUST 1968 TO AUGUST OF 1969. IN ALL CASES, BURIGANA IS SHOWN AS THE RECORDING SECRETARY AND HE TESTIFIED THAT HE, IN FACT, WAS THE AUTHOR OF THE MINUTES. HE ADMITTED THAT HE DID NOT, IN FACT, HOLD THE OFFICE OF RECORDING SECRETARY. BURIGANA COULD OFFER NO EXPLANATION AS TO THE WHEREABOUTS OF THE MINUTES OF THE GENERAL AND EXECUTIVE MEETINGS OF THE RESPONDENT FROM 1957 TO AUGUST 1968 NOR COULD HE ACCOUNT FOR THE ABSENCE OF ANY MINUTES COVERING THE PERIOD FROM AUGUST 1969 TO THE PRESENT. HE SUGGESTED THAT THE EARLIER MINUTES WERE PROBABLY DESTROYED IN A FIRE WHICH OCCURRED IN THE HEADQUARTERS OF THE RESPONDENT AT 163½ CHURCH STREET IN TORONTO, WHICH ACCORDING TO HIS RECOLLECTION OCCURRED IN ABOUT 1962. ACCORDING TO HIS EVIDENCE, MOST OF THE UNION'S RECORDS WERE DESTROYED IN THE FIRE.

11. WILLIAM CARSON OF THE TORONTO FIRE DEPARTMENT, ON THE OTHER HAND, TESTIFIED THAT THERE WAS A FIRE AT THE OFFICES OF LOCAL 117 ON CHURCH STREET WHICH HE HAD INVESTIGATED. ACCORDING TO HIS RECORDS, THE FIRE OCCURRED IN THE EARLY MORNING OF OCTOBER 6, 1960. WITHOUT GOING INTO THE DETAILS OF HIS TESTIMONY, HIS EVIDENCE IS THAT THE ROOM IN WHICH THE FILING CABINETS OF THE RESPONDENT WERE LOCATED WAS NOT TOUCHED BY THE FIRE. FURTHER, THE ONLY DAMAGE TO THE INSIDE OF THE RESPONDENT'S PREMISES WAS IN THE ADJACENT BOARD ROOM. IT APPEARED TO CARSON THAT THE CONTENTS OF A WASTEPAPER BASKET HAD BEEN

DEPOSITED ON THE BOARD TABLE AND SET ON FIRE. CARSON'S EVIDENCE IS CORROBORATED BY THAT OF COLLINS WHO TESTIFIED THAT ALL OF THE MINUTES AND RECORDS OF THE RESPONDENT WERE KEPT IN A METAL FILING CABINET AND A METAL STORAGE CABINET AND THAT NONE OF THE RECORDS WERE DESTROYED BY THE FIRE.

12. BURIGANA TESTIFIED THAT THE RESPONDENT HAD ADOPTED A LOCAL CONSTITUTION IN ABOUT 1960, WHICH HE BELIEVED HAD BEEN DESTROYED IN THE FIRE. ACCORDING TO HIM, IT WAS ONLY IN SEPTEMBER OF 1968 THAT, QUITE BY ACCIDENT, HE FOUND A COPY OF THE CONSTITUTION IN THE EXISTING FILES IN THE RESPONDENT'S PRESENT PREMISES. (THE UNION MOVED FROM ITS CHURCH STREET PREMISES IN THE MID-SIXTIES.) BURIGANA COULD OFFER NO EXPLANATION AS TO WHY HE HAD NOT MENTIONED OR INDICATED THE EXISTENCE OF A LOCAL CONSTITUTION WHILE GIVING TESTIMONY AT THE ORIGINAL HEARING OF THE INSTANT APPLICATION ON MAY 14, 1969.

13. BE THAT AS IT MAY, SECTION 3 OF THE DOCUMENT WHICH BURIGANA CLAIMS IS A COPY OF THE ORIGINAL CONSTITUTION OF THE RESPONDENT READS, IN PART:

MEMBERSHIP AND INITIATION

> THE APPROVED CLASSIFICATIONS FOR MEMBERSHIP IN LOCAL 117 SHALL BE; JOURNEYMAN PLASTERER
> APPRENTICE PLASTERER
> PLASTERER TRAINEE

THE WORKING RULES ARE ATTACHED TO THE CONSTITUTION AND PURPORT TO HAVE BEEN ADOPTED BY THE SPECIAL GENERAL MEETING OF JANUARY 14, 1958. SECTION 3(A) OF THE RULES READS:

> CHECK-OFF - UNION DUES - THE EMPLOYER SHALL DEDUCT, EFFECTIVE FEBRUARY 1ST, 1962, AS A CONDITION OF EMPLOYMENT, FROM THE WAGES OF EACH EMPLOYEE IN THE BARGAINING UNIT, PLASTERERS AND APPRENTICES, UNION DUES AND ASSESSMENTS IN THE AMOUNT CERTIFIED BY THE UNION. SUCH DEDUCTIONS SHALL BE MADE FROM THE FIRST PAY PERIOD OF EACH CALENDAR MONTH, AND SHALL BE REMITTED WITHIN FIFTEEN DAYS AND MADE PAYABLE TO THE FINANCIAL SECRETARY OF LOCAL 117. THE MONTHLY REMITTANCES SHALL BE ACCOMPANIED BY A COPY OF THE PAYROLL FOR THE PAY PERIOD IN WHICH THE DEDUCTION WAS MADE.

14. WE WOULD FURTHER MENTION THAT THE ABOVE "CHECK-OFF" PROVISION IS IDENTICAL TO THAT APPEARING AS ARTICLE 12 IN THE 1962 AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WHICH

WAS EXTENDED TO BE EFFECTIVE UNTIL APRIL 30, 1965. THIS AGREEMENT IS REFERRED TO IN PARAGRAPH 8. WE WOULD COMMENT ALSO THAT IT SEEMS TO US INDEED UNUSUAL THAT WORKING RULES ADOPTED INJANUARY 1958 SHOULD ONLY PROVIDE FOR THE CHECK-OFF OF UNION DUES SOME FOUR YEARS LATER IN FEBRUARY OF 1962. FURTHER, ACCORDING TO THE EVIDENCE OF COLLINS, WHO WAS THE BUSINESS MANAGER AT THE RELEVANT TIMES, ALTHOUGH A CONSTITUTION FOR LOCAL 117 WAS DISCUSSED, TO HIS RECOLLECTION, NO CONSTITUTION FOR THE RESPONDENT, IN FACT, WAS EVER ADOPTED.

15. THE MINUTES OF THE MEETING OF OCTOBER 8, 1968 RECORD THAT THOSE PRESENT WERE BURIGANA, BUSINESS MANAGER, EMIL LUBINSKI, PRESIDENT, E. DEL COL AND D. SANTIN, BUSINESS AGENTS, AND C. W. IRVINE, INTERNATIONAL VICE-PRESIDENT. THE MINUTES READ, IN PART:

> BRO. BURIGANA TOLD THE MEETING THAT AS THE MINUTE BOOK SHOWING THE ADOPTION OF BY-LAWS BY THE MEMBERSHIP HAD BEEN LOST IN A FIRE IN THE OFFICE OF LOCAL 117 AT 163½ CHURCH ST., IT WAS NECESSARY THAT THE LOCAL RE-AFFIRM THEIR DECISION TO ACCEPT THE BY LAWS AS IT WAS PRESENTED TO THEM AT A MEETING HELD IN JULY 1960.
>
> BRO. BURIGANA READ, AND EXPLAINED IN ITALIAN THE BY-LAWS AND AFTER CONSIDERABLE DISCUSSION IT WAS REGULARLY MOVED AND SECONDED AND PASSED BY A STANDING VOTE.
>
> THAT THE BY-LAWS AS READ BY BRO. BURIGANA BE ACCEPTED AS READ, BUT THAT THE EXECUTIVE BOARD, TO STUDY THE BY-LAWS, AND TO RECOMMEND ANY REVISIONS WHICH THEY FEEL ARE NECESSARY UNDER TO-DAYS CONDITIONS, AND REPORT BACK TO THE MEETING AS SOON AS POSSIBLE.

NO FURTHER REFERENCE TO THE BY-LAWS IS RECORDED IN THE MINUTES OF ANY SUBSEQUENT GENERAL MEETING AND NO MINUTES OF THE EXECUTIVE BOARD WERE FILED. BURIGANA TESTIFIED THAT THE ABOVE PROCEDURE WAS FOLLOWED SO AS TO LET THE MEMBERSHIP KNOW OF THE EXISTENCE AND CONTENTS OF THE CONSTITUTION, BY-LAWS AND WORKING RULES. THERE IS NOTHING IN THE MINUTES OF OCTOBER 8, 1968 WHICH INDICATES HOW MANY MEMBERS OF THE RESPONDENT WERE IN ATTENDANCE. THE MINUTES ONLY INDICATE THE OFFICERS WHO WERE PRESENT.

16. THERE WAS FILED WITH THE BOARD AN AGREEMENT DATED DECEMBER 15, 1967 BETWEEN THE RESPONDENT AND THE ASSOCIATION

EFFECTIVE UNITL APRIL 30, 1970, WHICH PURPORTS TO COVER ALL PLASTERERS' HELPERS EMPLOYED BY THE INTERVENER. (THIS AGREEMENT IS REFERRED TO IN PARAGRAPH 7.) THE AGREEMENT PROVIDES THAT PLASTERERS' HELPERS ARE COVERED BY LOCAL 117 WELFARE BENEFIT FUND AS OF JANUARY 1, 1968. THE AGREEMENT FURTHER PROVIDES THAT MONTHLY DUES, INITIATION FEES AND ASSESSMENTS STIPULATED AND AUTHORIZED BY LOCAL 117 ARE TO BE DEDUCTED AND FORWARDED TO LOCAL 117 AS PER THE PROCEDURE USED FOR PLASTERERS' MEMBERS OF LOCAL 117.

17. THE EVIDENCE IS THAT THE INTERVENER GAVE VOLUNTARY RECOGNITION TO THE RESPONDENT FOR PLASTERERS' HELPERS. IT WAS CONCEDED, HOWEVER, THAT AT THE TIME THE AGREEMENT WAS ENTERED INTO THE INTERVENER HAD NO PLASTERERS' HELPERS IN ITS EMPLOY. THE INTERVENER DID HIRE APPROXIMATELY A DOZEN PLASTERERS' HELPERS IN JANUARY 1968. ACCORDING TO THE DOCUMENTARY EVIDENCE FILED WITH THE BOARD, THE RESPONDENT ONLY SIGNED THEM INTO MEMBERSHIP AT THE END OF JANUARY AND THE BEGINNING OF FEBRUARY 1968.

18. AT THE TIME THE FEBRUARY 22, 1968 AGREEMENT WAS ENTERED INTO, THE INTERVENER HAD JOURNEYMEN PLASTERERS, THEIR APPRENTICES AND PLASTERERS' TRAINEES OR HELPERS IN ITS EMPLOY. THERE IS NO QUESTION THAT THE RESPONDENT HOLDS THE BARGAINING RIGHTS FOR THE JOURNEYMEN PLASTERERS AND APPRENTICES BY VIRTUE OF THE SERIES OF COLLECTIVE AGREEMENTS EXTENDING BACK TO 1957 OUTLINED ABOVE. FURTHER, THE DOCUMENTARY EVIDENCE REVEALS THAT AS OF THE DATE OF EXECUTION OF THE FEBRUARY 22, 1968 AGREEMENT, THE RESPONDENT HAD SIGNED VIRTUALLY ALL OF THE PLASTERERS' HELPERS, THEN IN THE EMPLOY OF THE INTERVENER, INTO MEMBERSHIP IN LOCAL 117.

19. BY THE FEBRUARY 22, 1968 COLLECTIVE AGREEMENT, THE INTERVENER RECOGNIZES LOCAL 117 AS THE SOLE AND EXCLUSIVE BARGAINING AGENT FOR ALL OF THE EMPLOYEES OF THE COMPANY SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. THIS, OF COURSE, ENCOMPASSES JOURNEYMEN PLASTERERS, APPRENTICES, AND TRAINEES OR HELPERS. THE AGREEMENT SETS OUT WAGE RATES FOR ALL THREE CLASSIFICATIONS. THE "CHECK-OFF" PROVISION PROVIDES THAT EFFECTIVE MAY 1, 1968, THE INTERVENER IS TO REMIT MONTHLY TO WILLIAM M. MERCER COMPANY LIMITED THE SUM OF 21¢ PER HOUR FOR EACH HOUR WORKED BY ALL JOURNEYMEN AND APPRENTICE PLASTERERS, COMPRISED OF 8¢ FOR EMPLOYEES' WELFARE FUND CONTRIBUTION, 5¢ FOR CHECK-OFF OF UNION DUES, AND 8¢ FOR SUPPLEMENTARY UNEMPLOYMENT BENEFIT FUND CONTRIBUTION. THE AMOUNT IS TO BE REMITTED BY THE 15TH DAY OF THE MONTH FOLLOWING THE CHECK-OFF. THE "CHECK-OFF" PROVISION FURTHER PROVIDES THAT ALL PLASTERERS' TRAINEES ARE TO BE COVERED BY LOCAL 117 WELFARE

BENEFIT FUND AS OF JANUARY 1, 1968 AND THAT THE INTERVENER IS TO CONTRIBUTE TO THE FUND 8¢ PER HOUR WORKED FOR EACH TRAINEE IN ITS EMPLOY, IN THE SAME MANNER AND FORM AS FOR THE PLASTERERS' MEMBERS OF LOCAL 117. THE AGREEMENT ALSO PROVIDES THAT AS OF MAY 1, 1968, THE INTERVENER IS TO CONTRIBUTE A FURTHER 8¢ PER HOUR WORKED FOR EACH TRAINEE IN ITS EMPLOY, WHICH IS TO BE USED TO PROVIDE SUPPLEMENTAL UNEMPLOYMENT BENEFITS TO THE TRAINEES, IN THE SAME MANNER AND FORM AS IS USED FOR PLASTERERS' MEMBERS OF LOCAL 117. THE AGREEMENT PROVIDES AS WELL THAT THE MONTHLY DUES, INITIATION FEES, ASSESSMENTS AS STIPULATED AND AUTHORIZED BY THE RESPONDENT ARE TO BE DEDUCTED AND FORWARDED TO THE UNION FOR TRAINEES AS PER THE PROCEDURE USED FOR OTHER MEMBERS OF LOCAL 117.

20. THERE WAS ALSO FILED WITH THE BOARD A DOCUMENT HEADED "LOCAL 117 - WELFARE TRUST FUND" ADDRESSED TO WILLIAM M. MERCER LIMITED, THE ADMINISTRATOR OF THE FUND, LISTING THE NAMES OF JOURNEYMEN PLASTERERS AND APPRENTICES AND THE AMOUNT DEDUCTED FROM EACH EMPLOYEE. THE DOCUMENT BEARS THE DATE "FEB. 1968". THERE WAS ALSO FILED WITH THE BOARD AN IDENTIAL FORM OF DOCUMENT DATED "FEB. 1968" COVERING THE PLASTERERS' TRAINEES. BOTH DOCUMENTS ARE SIGNED BY ALDO TESOLIN, THE PRESIDENT OF THE INTERVENER. AS WELL, THERE WAS FILED A DOCUMENT, SIGNED BY TESOLIN, WHICH SHOWS THE DUES DEDUCTION MADE FOR JOURNEYMEN AND APPRENTICE PLASTERERS AS OF FEBRUARY 7, 1968 FOR THAT MONTH. ON THE REVERSE SIDE OF THE DOCUMENT THERE APPEARS THE IDENTICAL CLAUSE TO THAT WHICH APPEARS AS SECTION 3 OF THE WORKING RULES OF LOCAL 117, QUOTED IN PARAGRAPH 13. THIS CLAUSE, AS WAS NOTED EARLIER (PARAGRAPH 14), ALSO APPEARS AS ARTICLE 12 OF THE 1962 AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER. THAT IS TO SAY, THE "CHECK-OFF", ACCORDING TO THAT CLAUSE, ONLY RELATES TO PLASTERERS AND APPRENTICES. THE EVIDENCE INDICATES, HOWEVER, THAT THE SAME "CHECK-OFF" WAS MADE BY THE INTERVENER AND REMITTED TO THE RESPONDENT FOR PLASTERERS' TRAINEES FOR THE MONTHS OF JANUARY AND FEBRUARY 1968. IN OTHER WORDS, DEDUCTIONS FOR THE WELFARE TRUST FUND WERE MADE BY THE COMPANY AND REMITTED TO THE UNION FOR PLASTERERS' TRAINEES PRIOR TO THE TIME THAT THE COLLECTIVE AGREEMENT OF FEBRUARY 22, 1968 WAS ENTERED INTO BY THE PARTIES.

21. IT IS CLEAR FROM THE PROVISIONS OF THE CONSTITUTION OF THE PARENT OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, REFERRED TO IN PARAGRAPH 6, THAT THE CONSTITUTION DOES NOT ENVISAGE OR PROVIDE FOR LOCAL UNIONS TAKING PLASTERERS' HELPERS OR TRAINEES INTO MEMBERSHIP. FURTHER, EVEN ASSUMING THAT LOCAL UNIONS CAN TAKE PLASTERERS' HELPERS OR TRAINEES INTO MEMBERSHIP, THE CONSTITUTION DOES NOT ACCORD TO THEM THE SAME RIGHTS AND PRIVILEGES THAT IT DOES TO THE PRIMARY CLASSIFICATIONS OF PLASTERERS, CEMENT MASONS AND SHOP HANDS.

22. As was stated in paragraph 9, subsequent to the initial hearing of the instant application, counsel for the respondent filed with the Board a copy of what purports to be the Constitution, By-laws and Working Rules of Local 117. This document, which is undated and unsigned, was identified at the second hearing of the application on January 8, 1970 by Burigana. The "Membership and Initiation" section of the Constitution, which is quoted in paragraph 13, provides that one of the approved classifications of membership in Local 117 is plasterer trainee. The "Check-off - Union Dues" section of the Working Rules, on the other hand, (also quoted in paragraph 3) only provides for the check-off of union dues and assessments by the employer from the employees in the bargaining unit specified to be plasterers and apprentices. That is notwithstanding that the purported Constitution of the local provides for membership in the respondent of plasterers' trainees, the attached Working Rules do not make provision for the deduction of union dues from this classification of employees. Further, as was commented upon in paragraph 14, although the Working Rules were purportedly adopted in January of 1958, the provision for the check-off of dues for some inexplicable reason was not scheduled to become effective until February 1, 1962. Interestingly enough, as was mentioned in paragraph 14, the "Check-off - Union Dues" section of the Working Rules is identical to that appearing in Article 12 of the collective agreement between the respondent and the intervener dated 1962, which covers plasterers and apprentices only. Also, as was noted in paragraph 20, this same provision is quoted on the reverse side of the Standard Check-off Form completed by the intervener showing the deduction of dues as of February 7, 1968.

23. At the issue in the instant application is qhether or not the respondent is entitled to represent plasterers' trainees in the employ of the intervener. At the initial hearing, Burigana was examined and cross-examined on this issue. At that hearing, he made no reference to the respondent having adopted a local constitution which allows Local 117 to take plasterers' trainees into membership. At the secondhearing, his explanation for this omission and the failure to produce the Constitution was that the original of the Constitution, as well as the By-laws and Working Rules, and by inference all copies of the same, had been destroyed in a fire at the offices of Local 117, along with most of the records of the union. We find this explanation impossible to accept in view of Burigana's later testimony that he found a copy of the Constitution, By-laws and Working Rules among the current files of the respondent in September of 1968, some nine months prior to the initial hearing of this application. Moreover, according to his evidence, upon finding the copy, he was responsible for having the Constitution, By-laws and Working Rules reaffirmed by the membership at a general meeting on October 8, 1968,

THE RELEVANT PORTION OF WHICH MINUTES IS QUOTED IN PARAGRAPH 15.

24. THE EVIDENCE OF BURIGANA RELATING TO THE ADOPTION OF THE LOCAL CONSTITUTION IN 1960 IS IN DIRECT CONFLICT WITH THE EVIDENCE OF ARTHUR COLLINS, WHO TESTIFIED THAT ALTHOUGH A CONSTITUTION FOR LOCAL 117 WAS DISCUSSED, TO HIS RECOLLECTION NONE, IN FACT, WAS EVER ADOPTED. WE WOULD POINT OUT THAT AT THE RELEVANT TIME BURIGANA WAS ONLY A BUSINESS AGENT WHEREAS COLLINS WAS THE BUSINESS MANAGER OF THE UNION AND PRESUMABLY IN A BETTER POSITION TO KNOW WHETHER OR NOT A LOCAL CONSTITUTION HAD EVER BEEN ADOPTED. BURIGANA'S EVIDENCE WITH RESPECT TO THE FIRE AT THE LOCAL'S OFFICE IS ALSO IN DIRECT CONFLICT WITH THE TESTIMONY OF COLLINS AND WILLIAM CARSON, BOTH OF WHOM TESTIFIED THAT IN THE FIRE WHICH OCCURRED AT THE UNION'S OFFICES AT 163½ CHURCH STREET IN TORONTO, ON OCTOBER 6, 1960, NO RECORDS OF THE RESPONDENT WERE DESTROYED.

25. SECTION 142 OF THE CONSTITUTION OF THE PARENT INTERNATIONAL UNION READS, IN PART, THAT ALL LOCAL UNIONS MUST SUBMIT THEIR CONSTITUTION, BY-LAWS AND WORKING RULES, AND ANY AMENDMENTS OR ALTERATIONS THERETO, TO INTERNATIONAL HEADQUARTERS FOR REVIEW AND COMMENT. PRESUMABLY THEN, IF, AS BURIGANA TESTIFIED, LOCAL 117 DID ADOPT A CONSTITUTION, BY-LAWS AND WORKING RULES, A COPY OF THE SAME WOULD HAVE BEEN ON FILE AT THE HEADQUARTERS OF THE INTERNATIONAL UNION UNION. ASSUMING, AS BURIGANA WOULD HAVE US BELIEVE, THAT THE ORIGINALS AND COPIES OF THESE DOCUMENTS WERE DESTROYED IN THE FIRE, THEN PRESUMABLY IT WOULD HAVE BEEN A SIMPLE MATTER TO REPLACE THEM THROUGH THE PARENT BODY. AGAIN, FOR SOME INEXPLICABLE REASON, NO REQUEST FOR THEM WAS MADE FROM THIS SOURCE. EVEN IF WE WERE TO ACCEPT BURIGANA'S TESTIMONY THAT HEJUST "HAPPENED" TO FIND A COPY OF THE CONSTITUTION, BY-LAWS AND WORKING RULES OF LOCAL 117 IN SEPTEMBER OF 1968, WE FIND IT DIFFICULT TO UNDERSTAND WHY HE FELT IT NECESSARY TO RE-AFFIRM THEM IN THE MANNER IN WHICH IT WAS DONE AT THE GENERAL MEETING OF OCTOBER 8, 1968.

26. AS BETWEEN THE EVIDENCE OF COLLINS AND CARSON, ON THE ONE HAND, AND THATOF BURIGANA, ON THE OTHER, WE HAVE NO HESITATION IN ACCEPTING THE TESTIMONY OF THE FORMER OVER THE LATTER. EVEN MUCH OF THE EVIDENCE OF BURIGANA, WHICH WAS NOT DIRECTLY CONTRADICTED, DEFIES LOGIC OR REASONABLE EXPLANATION. AT BEST, BURIGANA'S TESTIMONY DISPLAYED A VAGUE AND OBVIOUSLY FAULTY MEMORY. AT WORST, BURIGANA WAS GUILTY OF FABRICATIONS AND DISTORTING THE FACTS, ALBEIT INEPT, IN AN ENDEAVOUR TO ADVANCE THE INTERESTS OF THE RESPONDENT. A REVIEW OF THE TOTALITY OF HIS EVIDENCE INCLINES US TOWARDS THE SECOND CONCLUSION. BASED ON ALL THE EVIDENCE, IT IS OUR FINDING THAT LOCAL 117, IN FACT, NEVER DID ADOPT THE LOCAL CONSTITUTION. BY-LAWS AND WORKING RULES FILED WITH THE BOARD.

27. LET US ASSUME, HOWEVER, FOR PURPOSES OF ARGUMENT THAT THE CONSTITUTION IDENTIFIED BY BURIGANA IS A BONA FIDE DOCUMENT. WHILE THE CONSTITUTION PROVIDES FOR MEMBERSHIP IN LOCAL 117 BY PLASTERERS' TRAINEES, THE CONSTITUTION OF THE PARENT UNION, AS HAS BEEN STATED, DOES NOT CONTEMPLATE OR PROVIDE FOR LOCAL UNIONS TAKING THIS CLASSIFICATION INTO MEMBERSHIP. WE WOULD MENTION AGAIN THAT THE EVIDENCE OF COLLINS WAS THAT THE PARENT BODY HAD NO INTEREST IN ASSERTING A JURISDICTIONAL CLAIM TO REPRESENT PLASTERERS' HELPERS OR TRAINEES. FURTHER, SECTION 142 OF THE INTERNATIONAL CONSTITUTION PROVIDES THAT THE CONSTITUTION, BY-LAWS, RULES OF ORDER OR WORKING RULES SHALL NOT BE ADOPTED BY ANY LOCAL UNION THAT CONFLICT WITH THE PROVISIONS OF THE INTERNATIONAL CONSTITUTION. THE ELIGIBILITY PROVISION FOR PLASTERERS' TRAINEES IN THE CONSTITUTION OF LOCAL 117 CAN ONLY BE VIEWED AS BEING IN CONFLICT WITH THE PROVISIONS OF THE CONSTITUTION OF THE PARENT BODY AND IS THEREFORE A NULLITY.

28. LEAVING ASIDE THE ABOVE FINDINGS FOR THE MOMENT, WE WOULD COMMENT ON BURIGANA'S TESTIMONY THAT BETWEEN 1957 AND 1962 THE RESPONDENT TOOK PLASTERERS' HELPERS OR TRAINEES INTO MEMBERSHIP AND BARGAINED ON THEIR BEHALF. IN SUPPORT OF THIS CONTENTION, HE IDENTIFIED THE AGREEMENT DATED APRIL 15, 1958 BETWEEN THE UNITED LATHING & PLASTERING CONTRACTORS ASSOCIATION OF TORONTO AND THE PLASTERER'S HELPERS UNION 117 OF TORONTO, REFERRED TO IN PARAGRAPH 4. BURIGANA SEEMED TO SUGGEST IN HIS EVIDENCE THAT THE PLASTERER'S HELPERS UNION 117 WAS ONE AND THE SAME BODY AS LOCAL 117 BUT OFFERED NO EXPLANATION AS TO HOW, INDEED, THIS COULD BE THE CASE. COLLINS, ON THE OTHER HAND, UNEQUIVOCALLY TESTIFIED THAT THE RESPONDENT FROM ITS INCEPTION ONLY REPRESENTED JOURNEYMEN PLASTERERS AND THEIR APPRENTICES AND THAT AT NO TIME WAS LOCAL 117 THE BARGAINING AGENT FOR PLASTERERS' HELPERS OR TRAINEES. WE ACCEPT COLLINS' EVIDENCE OVER THAT OF BURIGANA. IN OTHER WORDS, LOCAL 117 HAS NO HISTORY OF REPRESENTING PLASTERERS' TRAINEES.

29. THE RESPONDENT DID SUBMIT EVIDENCE THAT SATISFIED THE BOARD THAT AT THE TIME THE FEBRUARY 22, 1968 COLLECTIVE AGREEMENT WAS ENTERED INTO THE RESPONDENT HAD SIGNED INTO MEMBERSHIP THE VAST MAJORITY OF PLASTERERS' TRAINEES THEN IN THE EMPLOY OF THE INTERVENER. AS WAS ACKNOWLEDGED EARLIER IN THIS DECISION, THE RESPONDENT HAD HELD THE BARGAINING RIGHTS FOR PLASTERERS AND THEIR APPRENTICES FOR A DOZEN YEARS. THE EVIDENCE IS, HOWEVER, THAT THE INTERVENER MADE DEDUCTIONS FROM THE WAGES OF THE PLASTERERS' TRAINEES COVERING THE MONTHS OF JANUARY AND FEBRUARY 1968 FOR THE LOCAL 117 WELFARE BENEFIT FUND. THIS ACTION WOULD APPEAR TO HAVE BEEN DONE PURSUANT TO A CLAUSE IN THE AGREEMENT DATED DECEMBER 15, 1967, BETWEEN THE INTERVENER AND THE RESPONDENT, WHICH PURPORTS TO COVER PLASTERERS' HELPERS. THE CLAUSE

IN QUESTION PROVIDES THAT "ALL PLASTERER HELPERS SHALL BE COVERED BY LOCAL 117 WELFARE BENEFIT FUND AS OF JANUARY 1ST 1968, AND ALL THE RULES PERTAINING TO SAME". AS WAS STATED IN PARAGRAPH 17, AT THE TIME THAT AGREEMENT WAS ENTERED INTO THE INTERVENER HAD NO PLASTERERS' HELPERS IN ITS EMPLOY. COUNSEL FOR THE RESPONDENT CONCEDED AT THE HEARING THAT IN THESE CIRCUMSTANCES THE DECEMBER 15, 1967 AGREEMENT WAS NOT VALID AND THAT THE RESPONDENT WAS NOT PLACING ANY RELIANCE UPON IT. THE SAME PROVISION, I.E., THAT PLASTERERS' TRAINEES ARE COVERED BY THE WELFARE BENEFIT FUND OF LOCAL 117 AS OF JANUARY 1, 1968, ALSO APPEARS IN THE FEBRUARY 22, 1968 AGREEMENT. THE CLAUSE IN THELATTER AGREEMENT SPECIFICALLY GOES ON TO PROVIDE THAT THE INTERVENER IS TO CONTRIBUTE TO THE FUND THE SUM OF 8¢ PER HOUR WORKED FOR EACH TRAINEE IN ITS EMPLOY, IN THE SAME MANNER AND FORM AS FOR PLASTERER MEMBERS OF LOCAL 117.

30. AGAIN, LET US ASSUME FOR ARGUMENT SAKE ONLY THAT THE RESPONDENT CAN TAKE PLASTERERS' TRAINEES INTO MEMBERSHIP AND/OR ACCORD THEM FULL MEMBERSHIP PRIVILEGES. THE ACTIVE ASSISTANCE LENT TO THE RESPONDENT BY THE INTERVENER BY WAY OF DEDUCTING WELFARE BENEFIT FUND CONTRIBUTIONS FOR LOCAL 117 FROM THE WAGES OF THE PLASTERERS' TRAINEES IN ITS EMPLOY, PURSUANT TO SECTION 36 OF THE ACT, DESTROYS THE VALIDITY OF THE FEBRUARY 22, 1968 COLLECTIVE AGREEMENT AS IT RELATES TO PLASTERERS' TRAINEES.

31. COUNSEL FOR THE RESPONDENT SUBMITS THAT THE BOARD COULD NOT DECLARE THAT THE COLLECTIVE AGREEMENT OF FEBRUARY 22, 1968 IS INVALID AS IT RELATES TO PLASTERERS' TRAINEES BUT AT THE SAME TIME VALID AS IT RELATES TO JOURNEYMEN AND APPRENTICE PLASTERERS. WE WOULD REITERATE THE BOARD'S FINDINGS THAT THE RESPONDENT CANNOT TAKE PLASTERERS' TRAINEES INTO MEMBERSHIP AND/OR ACCORD THEM FULL MEMBERSHIP PRIVILEGES. FURTHER, THE RESPONDENT HAS NEVER ACQUIRED BARGAINING RIGHTS FOR THEM OR REPRESENTED THEM IN COLLECTIVE BARGAINING WITH THE INTERVENER. IN THESE CIRCUMSTANCES, WE FIND IT WITHIN THE PURVIEW OF THE BOARD'S JURISDICTION UNDER SECTION 45A TO MAKE THE ALTERNATIVE DECLARATION SOUGHT BY THE RESPONDENT (SEE REGINA V. ONTARIO LABOUR RELATIONS BOARD, EXPARTE LAKEHEAD REGISTERED NURSING ASSISTANTS BARGAINING ASSOCIATION [1969] 2 O.R. P. 597 AT P. 602).

32. ACCORDINGLY, FOR ALL OF THE FORGOING REASONS, THE BOARD DECLARES THAT THE RESPONDENT WAS NOT, AT THE TIME THE COLLECTIVE AGREEMENT DATED FEBRUARY 22, 1968 WAS ENTERED INTO, ENTITLED TO REPRESENT THE PLASTERERS' TRAINEES IN THE EMPLOY OF THE INTERVENER.

17044-69-R: THOMAS FEENEY AND PETER RENNIE (APPLICANTS) V. SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 204 (RESPONDENT).

(RE: METROPOLITAN SEPARATE SCHOOL BOARD.

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: FEBRUARY 24, 1970.

1. BY A DECISION OF THE BOARD DATED DECEMBER 18, 1969, THE BOARD DIRECTED THE TAKING OF A REPRESENTATION VOTE IN THE INSTANT APPLICATION FOR TERMINATION OF BARGAINING RIGHTS MADE UNDER SECTION 43 OF THE ACT.

2. THE UNIT FOR WHICH THE RESPONDENT HAS HELD THE BARGAINING RIGHTS WHICH THE APPLICANTS ARE SEEKING TO TERMINATE WAS AGREED UPON BY THE PARTIES AT THE HEARING OF THE APPLICATION AND IS SET OUT IN PARAGRAPH 4 OF THE BOARD'S DECISION OF DECEMBER 18, 1969.

3. AT THE TAKING OF THE REPRESENTATION VOTE ON JANUARY 20, 1970, THE NUMBER OF PERSONS ON THE ORIGINAL LIST PREPARED BY THE EMPLOYER WAS 401. THE PARTIES CONSENTED TO THE STRIKING OFF OF THREE OF THOSE NAMES (ATTACHED AS APPENDIX "A" TO THE RETURNING OFFICER'S REPORT) REDUCING THE VOTERS' LIST TO 398. THE PARTIES FURTHER AGREED TO THE ADDITION OF FOUR NAMES TO THE LIST (APPENDIX "B") WHICH BROUGHT THE VOTERS' LIST UP TO 402. A CHALLENGE WAS MADE TO THE ELIGIBILITY OF ELEVEN PERSONS ON THE LIST TO CAST BALLOTS (APPENDIX "C") AND THESE PERSONS WERE PERMITTED TO CAST BALLOTS WHICH WERE SEGREGATED. A TOTAL OF 25 NAMES WERE REMOVED FROM THE VOTERS' LIST (APPENDIX "D") PURSUANT TO SECTION 43(5) OF THE ACT. THE REVISED VOTERS' LIST THEN CONTAINED 377 NAMES. A TOTAL OF 24 PERSONS (APPENDIX "E") WHOSE NAMES DID NOT APPEAR ON THE VOTERS' LIST PRESENTED THEMSELVES AT THE POLLING STATION AND WERE PERMITTED TO CAST SEGREGATED BALLOTS. A TOTAL OF 374 PERSONS, INCLUDING THE PERSONS WHO CAST SEGREGATED BALLOTS, PARTICIPATED IN THE VOTE. THE BALLOT BOX WAS SEALED BY ORDER OF THE REGISTRAR.

4. BY LETTER DATED FEBRUARY 2, 1970, THE APPLICANTS SUBMITTED THAT THE 24 PERSONS WHO CAST SEGREGATED BALLOTS (APPENDIX "E") WERE ON THE PAYROLL OF THE EMPLOYER ON THE DATE OF APPLICATION AND THEREFORE SHOULD BE ELIGIBLE TO VOTE. BY LETTER DATED FEBRUARY 9, 1970, HOWEVER, THE APPLICANT STATED THAT THE "VOTE SHOULD BE COUNTED ON THE BASIS OF THE APPROVED LIST". WITH RESPECT TO THE 11 PERSONS CHALLENGED BY THE RESPONDENT WHOSE BALLOTS WERE SEGREGATED, IN THEIR LETTER OF FEBRUARY 2, 1970 THE APPLICANTS ADOPTED A NEUTRAL POSITION. IN THEIR LETTER OF FEBRUARY 9, 1970, THEY STATED THAT THEY AGREED WITH THE POSITION OF THE RESPONDENT, WHICH IS SET OUT BELOW.

5. By letter dated February 3, 1970, counsel for the respondent union submitted that the 11 persons on Appendix "C" attached to the Returning Officer's Report were dismissed by the employer without just cause but that the employer alleges that they were either on indefinite lay-off or were laid off for a temporary period. In this situation, counsel for the respondent took the position that the Board would have to make a determination with respect to the eligibility of these persons to cast ballots. With respect to the 24 persons on Appendix "E", counsel for the respondent stated that it appeared that the employer did not include any persons on the voters' list who were probationary employees and that the 24 persons on Appendix "E" were in this classification. Counsel for the respondent submitted a list of names of 23 other persons whose names do not appear on the voters' list. Counsel asserts that they were probationary employees on the date the vote was directed and were at work on the day of the vote. Counsel submits that the 23 names should be added to the voters' list and that all 47 probationary employees were eligible to cast ballots.

6. The employer, the Metropolitan Separate School Board, by letter dated February 11, 1970, submitted that the 11 persons on Schedule "C" were on indefinite lay-off. The employer further advised the Board that it had not included on the voters' list employees of the School Board who did not pay union dues, or had not completed their probationary period as of December 18, 1969. The employer further advised the Board that with the exception of five persons on Appendix "E", all of the remaining 20 persons and the 23 persons listed in the respondent's letter of February 3, 1970 were either probationary employees or employees who were not paying union dues. According to the employer, the five names on Appendix "E" referred to above were on the original voters' list. The employer advised the Board that their names, as they appear on Appendix "E", are misspelled and their correct names appear on the original voters' list. The employer enclosed a list of all the persons concerned and their employment status.

7. In response to an inquiry made by the Board, the Metropolitan Separate School Board advised the Board by letter dated February 19, 1970 that, with three exceptions, the 23 persons listed in the respondent's letter of February 11, 1970 were at work on January 20, 1970, the date of the taking of the representation vote. The three exceptions are Giuseppe Lapalla, James Gilkinson and Rosa Carabetta. Although the School Board is silent on the point, we are assuming that the three named employees were still employees as of January 20, 1970, the date of the taking of the vote.

8. THE UNIT DESCRIBED IN PARAGRAPH 4 OF THE BOARD'S DECISION OF DECEMBER 18, 1969 MAKES NO EXCLUSION OF PROBATIONARY EMPLOYEES OR EMPLOYEES WHO DO NOT PAY UNION DUES. ACCORDINGLY, ALL SUCH PERSONS SHOULD HAVE BEEN INCLUDED ON THE VOTERS' LIST. SINCE, HOWEVER, THE 25 PERSONS ON APPENDIX "D" WERE ABSENT FROM WORK DURING VOTING HOURS AND DID NOT CAST BALLOTS, THEIR NAMES WERE PROPERLY REMOVED FROM THE VOTERS' LIST PURSUANT TO SECTION 43(5) OF THE ACT.

9. BASED ON THE REPRESENTATIONS OF FACT OF THE EMPLOYER WITH REGARD TO THE PERSONS ON APPENDIX "E", SINCE THEY ARE EMPLOYEES OF THE EMPLOYER IN THE DESCRIBED UNIT AND CAST BALLOTS, THE BOARD FINDS THAT THEY WERE ELIGIBLE TO VOTE AND DIRECTS THAT THEIR NAMES BE ADDED TO THE VOTERS' LIST AND THEIR BALLOTS BE COUNTED.

10. ACCORDING TO THE REPRESENTATIONS OF FACT OF THE EMPLOYER, THE 23 PERSONS ON THE LIST SUBMITTED BY THE RESPONDENT IN THEIR LETTER OF FEBRUARY 3, 1970 WERE PROBATIONARY EMPLOYEES AND 20 OF THEM WERE AT WORK ON JANUARY 20, 1970, THE DATE THE VOTE WAS HELD, BUT THEY DID NOT CAST BALLOTS. SINCE THEY WERE AT WORK THEY WERE ELIGIBLE TO CAST BALLOTS. THE BOARD THEREFORE DIRECTS THAT THEIR NAMES BE ADDED TO THE VOTERS' LIST FOR PURPOSES OF THE COUNT. SINCE GIUSEPPE LAPALLA, JAMES GILKINSON AND ROSA CARBETTA WERE ABSENT FROM WORK DURING VOTING HOURS AND DID NOT CAST THEIR BALLOTS, THE BOARD, PURSUANT TO SECTION 43(5), DIRECTS THAT THEIR NAMES NOT BE ADDED TO THE VOTERS' LIST FOR PURPOSES OF THE COUNT.

11. WE WOULD POINT OUT THAT PROBATIONARY EMPLOYEES WERE NOT EXCLUDED FROM THE DESCRIBED UNIT OF ELIGIBLE VOTERS ON THE NOTICE OF TAKING OF VOTE (FORM 42) WHICH WAS POSTED IN APPROPRIATE LOCATIONS SO THAT THEY WOULD REASONABLY COME TO THE ATTENTION OF THE EMPLOYEES. ACCORDINGLY, THE 23 PROBATIONARY EMPLOYEES CONCERNED MUST BE ASSUMED TO HAVE HAD NOTICE OF THE TAKING OF THE VOTE AND COULD HAVE CAST BALLOTS HAD THEY SO DESIRED AS DID 24 OTHER PROBATIONARY EMPLOYEES.

12. WITH REGARD TO THE 11 EMPLOYEES ON APPENDIX "C", THE STATUS OF THESE PERSONS APPEARS STILL TO BE IN DOUBT. THE BOARD ACCORDINGLY DIRECTS THAT THEIR BALLOTS REMAIN SECREGATED AND NOT COUNTED.

13. THE BOARD DIRECTS THAT THE REGISTRAR CAUSE THE VOTERS' LIST TO BE REVISED AND THE BALLOT BOX TO BE OPENED AND THE BALLOTS COUNTED, INCLUDING SEGREGATED BALLOTS, IN ACCORDANCE WITH THE ABOVE RULINGS OF THE BOARD. THE BOARD FURTHER DIRECTS THAT THE ABOVE REVISION OF THE VOTERS' LIST AND THE OPENING OF THE BALLOT BOX AND THE COUNTING OF THE BALLOTS BE DEFERRED FOR A

PERIOD OF SEVEN DAYS FROM THE DATE OF THE INSTANT DECISION. THE PURPOSE OF THIS DELAY IS TO AFFORD THE PARTIES AN OPPORTUNITY TO MAKE REPRESENTATIONS AS TO THE ACCURACY OF THE FACTS UPON WHICH THE BOARD HAS MADE ITS RULING AND ANY OTHER ISSUES RELATING TO THE VOTERS' LIST OR THE ELIGIBILITY OF EMPLOYEES TO CAST BALLOTS IN THE VOTE HELD ON JANUARY 20, 1970.

14. THE MATTER IS REFERRED TO THE REGISTRAR.

17194-69-R: ANDRE CONSTRUCTION COMPANY, 474 WEST STREET NORTH, P.O. BOX 566, ORILLIA, ONTARIO (APPLICANT) v. THE CENTRAL ONTARIO DISTRICT COUNCIL UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT).

(RE: ANDRE CONSTRUCTION COMPANY

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: J. V. ANDRE, STAN JORDAN FOR THE APPLICANT; F. BERRIAULT, T. E. ARMSTRONG FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 18, 1970.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE ISSUED BY THIS BOARD. THE APPLICANT BRINGS THIS APPLICATION UNDER SECTION 46 OF THE LABOUR RELATIONS ACT. THE RESPONDENT CONTENDS THAT SECTION 46 DOES NOT PROVIDE ANY RIGHT FOR THE EMPLOYER TO BRING AN APPLICATION AND REQUESTS THAT THE APPLICATION BE DISMISSED.

2. EVEN ASSUMING, BUT WITHOUT DECIDING, THAT THE EMPLOYER HAS THE RIGHT TO BRING AN APPLICATION PURSUANT TO SECTION 46, WE ARE OF THE OPINION THAT THE APPLICATION SHOULD BE DISMISSED. THE APPLICANT AT THE HEARING ADVISED THE BOARD THAT THERE WERE NO EMPLOYEES WHO ARE EMPLOYED BY THE APPLICANT. IN SENTRY DEPARTMENT STORES LIMITED (OPERATING UNDER THE NAME G.E.M. STORES (1965) v. RETAIL CLERKS INTERNATIONAL ASSOCIATION 1969 JANUARY OLRB MTHLY. REP. 1039 AND BLH-BERTRAM LIMITED v. THE INTERNATIONAL HOLDERS' & ALLIED WORKERS' UNION 1969 JANUARY OLRB MTHLY. REP. 1032 THIS BOARD DISMISSED AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS ON THE BASIS THAT THERE WERE NO EMPLOYEES IN THE BARGAINING UNIT AT THE TIME OF THE APPLICATION. FOR THE REASONS GIVEN IN THOSE CASES THIS APPLICATION IS DISMISSED.

INDEXED ENDORSEMENTS - SUCCESSOR STATUS

17050-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE BOARD OF EDUCATION FOR THE BOROUGH OF NORTH YORK (RESPONDENT) NORTH YORK BOARD OF EDUCATION INDEPENDENT CARETAKERS UNION (PREDECESSOR TRADE UNION) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: M. LEVINSON, J. ANDERSON AND JAMES MCPHAIL FOR THE APPLICANT AND THE PREDECESSOR TRADE UNION, W. G. PHELPS, TOM PARK AND TOM LEWIN FOR THE RESPONDENT, W.I.C. BINNIE FOR THE OBJECTORS.

DECISION OF THE BOARD: FEBRUARY 24, 1970.

1. THE APPLICANT HAS APPLIED UNDER THE PROVISIONS OF SECTION 47 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE APPLICANT HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF NORTH YORK BOARD OF EDUCATION INDEPENDENT CARETAKERS UNION BY REASON OF A MERGER, AMALGAMATION OR A TRANSFER OF JURISDICTION.

2. THE RELEVANT FACTS OF THIS CASE APPEAR TO BE AS FOLLOWS. THE PREDECESSOR TRADE UNION HAD A MEMBERSHIP MEETING DULY CALLED ON OCTOBER 26, 1969, AND AMENDED ITS CONSTITUTION BY PROVIDING THAT --

> THE OFFICERS OF THIS ORGANIZATION SHALL HAVE THE POWER TO MERGE, AFFILIATE OR AMALGAMATE WITH ANY OTHER TRADE UNION ORGANIZATION SHOULD SUCH MERGER, AFFILIATION OR AMALGAMATION BE APPROVED BY A MAJORITY OF MEMBERS ATTENDING A MEETING CALLED FOR THIS PURPOSE.

AT A SPECIAL EXECUTIVE MEETING DULY HELD ON NOVEMBER 4, 1969, THE EXECUTIVE BOARD PASSED THE FOLLOWING RESOLUTION:

> THAT THE NORTH YORK BOARD OF EDUCATION INDEPENDENT CARETAKERS' UNION EXECUTIVE RECOMMEND TO THE MEMBERSHIP THAT IT MERGE WITH THE CANADIAN UNION OF PUBLIC EMPLOYEES.

3. A SPECIAL MEETING OF THE MEMBERSHIP OF THE PREDECESSOR UNION WAS CALLED FOR NOVEMBER 23, 1969, AND THE AGENDA FOR THAT MEETING READS AS FOLLOWS:

> AT ITS MEETING ON NOVEMBER 4, 1969, THE EXECUTIVE PASSED THE FOLLOWING RESOLUTION:
>
> "THAT THE NORTH YORK BOARD OF EDUCATION INDEPENDENT CARETAKERS' UNION EXECUTIVE RECOMMEND TO THE MEMBERSHIP THAT IT MERGE WITH THE CANADIAN UNION OF PUBLIC EMPLOYEES."
>
> IF THIS RESOLUTION IS APPROVED BY THE MEMBERSHIP, ACTION WILL BE TAKEN TO COMPLETE THE MERGER.

4. AT THE SPECIAL MEMBERSHIP MEETING HELD ON NOVEMBER 23, 1969, 404 MEMBERS WERE PRESENT. THE PRESIDENT, JAMES MCPHAIL, CHAIRED THE MEETING. THE MINUTES OF THE MEETING OF NOVEMBER 23, 1969 READ, IN PART, AS FOLLOWS:

> J. MCPHAIL STATED THIS MEETING IS BEING HELD TO DECIDE IF THE CARETAKERS OF THE NORTH YORK BOARD OF EDUCATION WISH TO AFFILIATE WITH THE CANADIAN UNION OF PUBLIC EMPLOYEES AS PER THE MOTION BY THE EXECUTIVE DATED NOVEMBER 4, 1969.

5. FOLLOWING A QUESTION AND ANSWER PERIOD CONCERNING THE MOTION THAT WAS TO BE PUT TO THE MEETING, IT WAS MOVED THAT THE MATTER PROCEED TO A VOTE. THE EXACT TERMS OF THE MOTION WERE NOT SET OUT IN THE MINUTES OF THE MEETING, HOWEVER, THE RESULT OF THE VOTE INDICATED THAT 232 PERSONS VOTED IN FAVOUR OF THE MOTION, 171 PERSONS VOTED AGAINST THE MOTION, AND ONE PERSON CAST A SPOILED BALLOT.

6. ON NOVEMBER 27, 1969, THE NATIONAL SECRETARY-TREASURER OF THE APPLICANT WROTE TO THE PREDECESSOR UNION AS FOLLOWS:

> THIS LETTER IS TO NOTIFY YOU THAT THE CANADIAN UNION OF PUBLIC EMPLOYEES HAD AGREED TO ACCEPT INTO MEMBERSHIP THE MEMBERS OF THE NORTH YORK INDEPENDENT CARETAKERS UNION.
>
> THE CANADIAN UNION OF PUBLIC EMPLOYEES ALSO AGREES TO THE MERGER OF THE NORTH YORK INDEPENDENT CARETAKERS UNION WITH THE CANADIAN UNION OF PUBLIC EMPLOYEES.

7. A PROPOSED MOTION TO AMEND THE CONSTITUTION TO PROVIDE FOR THE DISPOSITION OF THE FUNDS AND PROPERTY OF THE PREDECESSOR UNION WAS DISCUSSED. A MEMBER "QUESTIONED THE REASON FOR THIS NOTICE WHEN ALL THE MEMBERS WERE INFORMED THE MONEYS ON HAND WOULD REMAIN IN OUR CONTROL. HE WAS UNDER THE IMPRESSION THAT CUPE WAS GOING TO RECEIVE THE MONEY WE HAD ON HAND. J. MCPHAIL READ OUT THE PROPOSED LETTER THAT IS BEING SENT TO ALL SCHOOLS RE HOW BEING AFFILIATED WITH CUPE OUR MONEY AND PROPERTY WILL BE KEPT IN OUR OWN LOCAL." THE FOLLOWING AMENDMENT TO THE CONSTITUTION WAS ADOPTED AT THIS MEETING:

> THE FUNDS AND PROPERTY OF THE UNION MAY BE TRANSFERRED TO ANY SUCCESSOR LOCAL UNION IF TWO-THIRDS OF THE MEMBERSHIP IN ATTENDANCE AT A SPECIAL OR REGULAR MEETING CALLED FOR THIS PURPOSE VOTES IN FAVOUR OF THE TRANSFER.
>
> THE RESULT OF THIS VOTE DOES NOT MEAN THAT WE ARE NO LONGER AN INDEPENDENT UNION, BUT THAT WE MAY NOW MERGE WITH THE CANADIAN UNION OF PUBLIC EMPLOYEES. AS THE VOTE SHOWS, THIS IS THE WISH OF THE MAJORITY OF THE MEMBERS PRESENT AT THIS SPECIAL MEETING.
>
> I WOULD ALSO LIKE TO DISPEL ANY DOUBTS THAT YOU MAY HAVE REGARDING MONEY AND PROPERTY BELONGING TO YOUR PRESENT UNION. THIS MONEY AND PROPERTY IN NO WAY BECOMES OR CAN BECOME, NOW OR AT ANY OTHER TIME, THE PROPERTY OF THE NATIONAL OR REGIONAL BODY OF THE CANADIAN UNION OF PUBLIC EMPLOYEES--IT REMAINS STRICTLY WITH THIS LOCAL!

8. AT THE HEARING IN THIS MATTER, MC. MCPHAIL TESTIFIED THAT THE APPLICANT HAD NOT ASSIGNED A LOCAL NUMBER TO THE EMPLOYEES WHO WERE REPRESENTED BY THE PREDECESSOR UNION. HE STATED, HOWEVER, THAT THE TERMS OF THE AGREEMENT WITH THE APPLICANT WERE THAT THE MEMBERS OF THE PREDECESSOR UNION WOULD BECOME MEMBERS OF A LOCAL OF THE NATIONAL BODY. MR. MCPHAIL INDICATED THAT THE MERGER THAT HAD BEEN APPROVED HAD NOT BEEN IMPLEMENTED PENDING A DECISION BY THIS BOARD IN THIS MATTER. ACCORDINGLY, THERE HAD BEEN NO FINAL DECISION ON THE DISPOSITION OF THE FUNDS OF THE PREDECESSOR UNION NOR WAS MR. MCPHAIL AWARE OF ANY STEPS TAKEN BY THE APPLICANT TO EFFECT THE MERGER.

9. FROM THE EVIDENCE SUMMARIZED ABOVE, IT IS READILY APPARENT THAT WHILE THE MEMBERSHIP HAS GIVEN APPROVAL TO THE OFFICERS OF THE PREDECESSOR UNION TO EFFECT A MERGER WITH THE

APPLICANT, IN ACCORDANCE WITH THE PROVISIONS OF THE PREDECESSOR UNION'S REVISED CONSTITUTION, AND WHILE THE BOARD IS SATISFIED THAT THE APPLICANT IS PREPARED TO MERGE WITH THE PREDECESSOR UNION, THE FINAL STEPS HAVE NOT BEEN TAKEN TO EFFECT THIS MERGER PENDINDING A DECISION BY THIS BOARD.

10. THE BOARD'S POWERS UNDER SECTION 47 OF THE ACT ARE TO MAKE A DECLARATION "THAT THE SUCCESSOR HAS OR HAS NOT, AS THE CASE MAY BE, ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES UNDER THIS ACT OF ITS PREDECESSOR". IN ORDER THAT THE BOARD MAY MAKE AN AFFIRMATIVE DECLARATION, THE BOARD MUST BE SATISFIED THAT THE SUCCESSOR HAS, AT THE TIME THE APPLICATION WAS MADE, ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF ITS PREDECESSOR. WHILE THE EVIDENCE HAS CLEARLY ESTABLISHED THAT A MAJORITY OF THE MEMBERS OF THE PREDECESSOR ATTENDING A MEETING CALLED FOR THE PURPOSE HAVE EMPOWERED THE OFFICERS OF THE PREDECESSOR TO MERGE, AFFILIATE OR AMALGAMATE WITH THE APPLICANT TRADE UNION, THE OFFICERS OF THE PREDECESSOR HAVE NOT TAKEN THE NECESSARY STEPS TO EFFECT THE MERGER WHICH HAS BEEN AUTHORIZED BY THE MAJORITY OF MEMBERS WHO ATTENDED THE MEETING ON NOVEMBER 23, 1969. THIS APPLICATION IS ACCORDINGLY PREMATURE.

11. AS INDICATED ABOVE, WHILE THE PROCEDURAL STEPS NECESSARY TO AUTHORIZE THE OFFICERS TO EFFECT THE MERGER HAVE BEEN PROPERLY TAKEN, IT REMAINS FOR THE OFFICERS OF THE PREDECESSOR, AND FOR THE OFFICERS OF THE APPLICANT, TO COMPLETE THE PAPERWORK AND OTHER PROCEDURAL MATTERS TO CAUSE THE APPLICANT TO BE THE SUCCESSOR OF THE PREDECESSOR TRADE UNION. SINCE IT WOULD APPEAR TO BE A CONDITION OF THE MERGER THAT A SEPARATE LOCAL BE ESTABLISHED FOR THE EMPLOYEES REPRESENTED BY THE PREDECESSOR, THE APPLICANT SHOULD ACCORDINGLY CHARTER SUCH A LOCAL FOR THIS PURPOSE IN ORDER THAT THE OFFICERS OF THE PREDECESSOR BE ABLE TO TRANSFER THE FUNDS AND OTHER PROPERTY OF THE PREDECESSOR TO THE NEWLY CHARTERED LOCAL AND TO DO THE OTHER PAPERWORK WHICH WILL BE REQUIRED, AT WHICH TIME THE MERGER WILL BE COMPLETED. SINCE THESE STEPS HAVE YET TO BE TAKEN, THE BOARD IS UNABLE TO DECLARE THAT A MERGER HAS TAKEN PLACE AND WHILE THE BOARD IS SATISFIED THAT THE APPLICANT IS DESIROUS OF DOING SO, THE BOARD IS UNABLE TO DECLARE, AT THIS TIME, THAT THE APPLICANT HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES UNDER THIS ACT OF THE PREDECESSOR AT THE TIME THIS APPLICATION WAS MADE.

12. THIS APPLICATION IS ACCORDINGLY DISMISSED.

17142-69-R: Oil, Chemical and Atomic Workers International Union (Applicant) v. Gulf Oil Canada Limited (Respondent) v. Gulf Oil Canada Limited, Clarkson Bargaining Association (Predecessor Trade Union) v. Group of Employees (Objectors).

BEFORE: J. D. O'Shea, Q.C., Vice-Chairman, and Board Members O. Hodges and H. F. Irwin.

APPEARANCES AT THE HEARING: L. A. MacLean and F. G. Geddes for Applicant, G. E. Bell and T. H. Glen for the Respondent, no one for the predecessor trade union, J. Stephenson and C. Heuchan for the objectors.

DECISION OF THE BOARD: February 18, 1970.

. . .

2. This is an application for a declaration that the applicant is the successor of the Gulf Oil Canada Limited, Clarkson Bargaining Association. There was filed in this matter a document which is described as a memorandum of agreement made the 7th day of November, 1969, between Gulf Oil Canada Limited and Gulf Oil Canada Limited, Clarkson Bargaining Association, covering certain employees of the respondent at its Clarkson Marketing Branch. The applicant seeks to establish that it has acquired the rights, privileges and duties of the Gulf Oil Canada Limited, Clarkson Bargaining Association by reason of a transfer of jurisdiction. In order to obtain the declaration sought by the applicant in this case, the applicant must establish that it is the successor of a "trade union" as required by section 47 of The Labour Relations Act.

3. The respondent took the position that the Gulf Oil Canada Limited, Clarkson Bargaining Association was not a trade union and therefore there were no rights, privileges and duties which could be acquired by the applicant in this case.

4. If the respondent is correct, the applicant could not succeed to the rights, privileges and duties of the Gulf Oil Canada Limited, Clarkson Bargaining Association as outlined in the memorandum of agreement made the 7th day of November, 1969, since such memorandum of agreement would therefore not be a collective agreement within the meaning of section 1(1)(c) of The Labour Relations Act, since a collective agreement must be an agreement in writing between an employer on the one hand or a trade union or a council of trade unions on the other.

5. The evidence clearly established, and both parties acknowledged, that there was no constitution or by-laws which had been adopted by the Clarkson employees of the respondent who were purported to be members of the Gulf Oil Canada Limited, Clarkson

BARGAINING ASSOCIATION, AND THERE WAS NOTHING IN WRITING TO EVIDENCE THE EXISTENCE OF THE GULF OIL CANADA LIMITED, CLARKSON BARGAINING ASSOCIATION. WHILE THE CLARKSON EMPLOYEES OF THE RESPONDENT WERE GUIDED BY A COPY OF A CONSTITUTION WHICH HAD BEEN ADOPTED BY THE TORONTO EMPLOYEES OF THE RESPONDENT, AND HAD, WITH THE ASSISTANCE OF THE RESPONDENT, DRAFTED A PROPOSED CONSTITUTION FOR ADOPTION BY THE CLARKSON EMPLOYEES, BOTH PARTIES AGREED THAT NO CONSTITUTION HAD IN FACT BEEN ADOPTED BY THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED.

6. BEFORE AN ORGANIZATION CAN OBTAIN RECOGNITION AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT, IT MUST BE ESTABLISHED THAT THE ORGANIZATION IS A VIABLE ENTITY WHICH HAS A CONSTITUTION, BY-LAWS, CHARTER OR OTHER DOCUMENTARY EVIDENCE WHICH WOULD ESTABLISH ITS EXISTENCE AS A VIABLE ENTITY AND WHICH PROSPECTIVE MEMBERS COULD INSPECT IN ORDER TO DETERMINE WHETHER OR NOT THE ORGANIZATION IS ONE WHICH SUCH PROSPECTIVE MEMBERS WOULD WISH TO JOIN.

7. FOR THE REASONS GIVEN BY THE BOARD IN THE BROCKVILLE CHEMICALS LIMITED CASE, OLRB MONTHLY REPORT, JULY 1961, P. 134, ALCAN UNIVERSAL HOMES DIVISION OF ALCAN DESIGN HOMES LIMITED CASE, OLRB MONTHLY REPORT, APRIL 1969, P. 55, AND THE DRUMMOND TRANSIT COMPANY CASE, OLRB MONTHLY REPORT, FEBRUARY 1959, P. 31, THE BOARD MUST FIND THAT IN THE ABSENCE OF THE EXISTENCE OF A CONSTITUTION OR OTHER DOCUMENTARY EVIDENCE WHICH WOULD ESTABLISH THAT THE GULF OIL CANADA LIMITED, CLARKSON BARGAINING ASSOCIATION IS A VIABLE ENTITY, THE BOARD MUST THEREFORE FIND THAT AS OF THE DATE OF THE FILING OF THIS APPLICATION THE GULF OIL CANADA LIMITED, CLARKSON BARGAINING ASSOCIATION WAS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. SINCE THERE WAS NO PREDECESSOR TRADE UNION, THERE IS NOTHING TO WHICH THE APPLICANT UNION COULD SUCCEED UNDER THE PROVISIONS OF SECTION 47 OF THE LABOUR RELATIONS ACT.

8. THIS APPLICATION IS THEREFORE DISMISSED.

INDEXED ENDORSEMENTS - SECTION 65

16900-69-U: THE CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. RENFREW COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: MARIO HIKL, M. LITTLEWOOD AND CECIL GARSKEY FOR THE COMPLAINANT, F. R. VON VEH AND G. LAFRAMBOISE FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN: FEBRUARY 23, 1970.

1. THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT WITH RESPECT TO HAROLD GRAHAM AND ANTHONY BOWERS. MR. GRAHAM AND MR. BOWERS WERE EMPLOYED BY THE RESPONDENT AS CARETAKERS. THE COMPLAINANT UNION HAD BEEN CERTIFIED AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES WHICH INCLUDED MR. GRAHAM AND MR. BOWERS ON MARCH 3, 1969. FOLLOWING WRITTEN NOTICE TO BARGAIN ON MARCH 10, 1969, THE PARTIES ENTERED INTO NEGOTIATIONS. MR. GRAHAM AND MR. BOWERS WERE ON THE UNIONS' NEGOTIATING COMMITTEE.

2. THERE WAS NO EVIDENCE WHICH WOULD SUGGEST THAT THE PARTIES WERE NOT BARGAINING IN GOOD FAITH. THE EVIDENCE ESTABLISHED THAT FIVE BARGAINING MEETINGS HAD BEEN HELD.

3. BOTH OF THE AGGRIEVED PERSONS HAD BEEN WARNED CONCERNING THE PERFORMANCE OF THEIR WORK. IN THE EARLY PART OF 1969, MR. BOWERS HAD BEEN SUSPENDED FOR LEAVING WORK WITHOUT PERMISSION. MR. GRAHAM HAD RECEIVED TWO WRITTEN REPRIMANDS. AROUND THE 1ST OF SEPTEMBER 1969, MR. GRAHAM WAS TRANSFERRED TO A LARGER SCHOOL WHERE, ON MR. GRAHAM'S OWN EVIDENCE, THE WORK WAS EASIER TO PERFORM AND MR. GRAHAM RECEIVED A HIGHER RATE OF PAY FOR THAT WORK. IN ADDITION TO THE COMPLAINTS ABOUT THE LACK OF CO-OPERATION AND THE COMPLAINTS CONCERNING THE PERFORMANCE OF THE WORK OF THE AGGRIEVED PERSONS, THE EMPLOYEES RECEIVED A WRITTEN CAUTION FROM THE RESPONDENT CONCERNING AN EMPLOYEE'S ATTEMPT TO PERSUADE OTHER EMPLOYEES DURING THEIR WORKING HOURS TO BECOME MEMBERS OF THE UNION. WHEN THE AGGRIEVED PERSONS PERSISTED IN DISCUSSING THE UNION DURING THEIR WORKING HOURS, THE RESPONDENT AGAIN CAUTIONED THE EMPLOYEES WITH RESPECT TO THIS CONDUCT. DURING ONE OF THE CONVERSATIONS BETWEEN MR. GRAHAM AND HIS SUPERVISOR, WHEN MR. GRAHAM WAS ASKED WHAT HE WOULD DO IN REGARD TO HIMSELF IF THE SUPERVISOR'S POSITION AND MR. GRAHAM'S POSITION WERE REVERSED, MR. GRAHAM REPLIED, "I WOULD FIRE YOU." FOLLOWING SUCH WARNINGS, CERTAIN EMPLOYEES COMPLAINED TO THE AGGRIVED PERSONS' SUPERVISOR CONCERNING THE AGGRIEVED PERSONS' CONTINUAL ATTEMPTS TO PRESSURE THEM INTO JOINING THE COMPLAINANT UNION. THE AGGRIEVED PERSONS' SUPERVISOR REQUESTED THAT THE COMPLAINING EMPLOYEES MAKE THEIR COMPLAINTS IN WRITING. WHEN WRITTEN COMPLAINTS WERE RECEIVED, THE AGGRIEVED PERSONS WERE DISCHARGED AND EACH OF THEM RECEIVED A WRITTEN NOTICE OF DISCHARGE WHICH WAS IN THE FOLLOWING FORM:

OCTOBER 7, 1969.

MR. HAROLD GRAHAM
432 CHRISTIE ST.
PEMBROKE, ONTARIO.

DEAR MR. GRAHAM:

IT HAS BEEN BROUGHT TO OUR ATTENTION THAT YOU HAVE ATTEMPTED DURING WORKING HOURS TO PERSUADE CERTAIN EMPLOYEES OF THE RENFREW COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD TO BECOME MEMBERS OF THE CANADIAN UNION OF PUBLIC EMPLOYEES.

IT HAS FURTHER BEEN BROUGHT TO OUR ATTENTION THAT YOUR REMARKS TO CERTAIN EMPLOYEES ABOVE REFERRED TO COULD BE INTERPRETED IN AN INTIMIDATERY OR COERCIVE MANNER TO SAY THE LEAST. OUR SCHOOL BOARD DEPLORES AND WILL NOT TOLERATE SUCH PRACTICES BY ANY OF ITS EMPLOYEES.

WE MUST THEREFORE ADVISE YOU THAT WE HAVE NO ALTERNATIVE BUT TO TERMINATE YOUR EMPLOYMENT. IN ASSESSING THIS PENALTY, WE HAVE TAKEN INTO ACCOUNT YOUR GENERAL WORK RECORD WITH THE BOARD AND THE TWO NOTICES THAT WERE SENT TO YOU ON APRIL 11, 1969 AND MAY 26, 1969.

THE DISCHARGE NOTICE RECEIVED BY MR. BOWERS WAS IN THE SAME FORM EXCEPT THAT THE NOTICE TO MR. BOWERS MADE REFERENCE TO THE PROBATIONARY PERIOD WHICH WAS IMPOSED BY THE RESPONDENT ON JANUARY 19, 1969, AS A RESULT OF HIS MISCONDUCT RATHER THAN THE DATES OF THE REPRIMAND NOTICES WHICH APPEAR IN MR. GRAHAM'S NOTICE.

4. IT WAS THE RESPONDENT'S POSITION THAT IT WAS JUSTIFIED IN EFFECTING THE DISCHARGES AFTER THE PRIOR WARNINGS WHICH HAD BEEN GIVEN. THE RESPONDENT ACKNOWLEDGED THAT WHILE THE CULMINATING INCIDENT WHICH LED TO THE DISCHARGE, IF TAKEN ALONE, MIGHT NOT BE SUFFICIENT CAUSE TO DISCHARGE THE AGGRIEVED PERSONS, THIS INCIDENT WAS THE FINAL STRAW AFTER PREVIOUS WARNINGS HAD BEEN GIVEN AND THE INCIDENT ALONE WAS NOT THE ONLY CAUSE FOR DISCHARGE.

5. THE COMPLAINANT ARGUED THAT SINCE THE INCIDENT WHICH LED TO THE DISCHARGE CONCERNED THE AGGRIEVED PERSONS' ATTEMPTS TO PERSUADE OTHER EMPLOYEES TO BECOME MEMBERS OF THE UNION, WHICH WAS A LAWFUL ACTIVITY, THE RESPONDENT HAD THEREFORE ATTEMPTED TO UNDERMINE THE UNION'S EFFORTS TO NEGOTIATE A COLLECTIVE AGREEMENT.

6. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE EVIDENCE DOES NOT SUPPORT THE POSITION TAKEN BY THE COMPLAINANT IN THIS MATTER. THE EVIDENCE

CLEARLY ESTABLISHED THAT BOTH THE AGGRIEVED PERSONS HAD RECEIVED WARNINGS AND WERE GIVEN MORE THAN ONE CHANCE TO ALTER THEIR WORK HABITS AND TO PERFORM THEIR WORK IN THE MANNER REQUIRED BY THE RESPONDENT. SECTION 53 OF THE LABOUR RELATIONS ACT PROTECTS THE RESPONDENT'S RIGHT TO STOP UNION ACTIVITIES ON THE RESPONDENT'S PREMISES DURING WORKING HOURS WHERE SUCH ACTIVITIES INTERFERE WITH PRODUCTION OR OTHER EMPLOYEES. HAVING REGARD TO THE FACT THAT THE AGGRIEVED PERSONS WERE DISCHARGED LONG AFTER THE UNION WAS CERTIFIED AND THE FACT THAT ONE OF THE AGGRIEVED PERSONS WAS PROMOTED AT A TIME WHEN THE RESPONDENT WAS WELL AWARE THAT HE WAS ON THE UNION'S NEGOTIATING COMMITTEE, WE FIND THAT SUCH EVIDENCE CLEARLY ESTABLISHES THAT THE RESPONDENT WAS NOT PREJUDICED AGAINST MR. GRAHAM BECAUSE OF HIS UNION ACTIVITIES.

7. THE BOARD IS SATISFIED ON ALL THE EVIDENCE BEFORE IT THAT THE REAL REASONS FOR THE DISCHARGE OF MR. GRAHAM AND MR. BOWERS WERE THAT THE AGGRIEVED PERSONS REFUSED TO CARRY OUT THE RESPONDENT'S INSTRUCTIONS AND ABIDE BY THE WARNINGS THAT WERE GIVEN. SINCE THE AGGRIEVED PERSONS PERSISTED IN CONDUCT WHICH WAS FORBIDDEN AND WHICH THE RESPONDENT HAD THE RIGHT TO FORBID, WE MUST FIND THAT THE REAL REASON FOR THE DISCHARGE WAS THE REFUSAL BY THE AGGRIEVED PERSONS TO REFRAIN FROM ACTIVITY WHICH HAD BEEN FORBIDDEN.

8. IN THIS CASE, WE ARE NOT CALLED UPON TO DETERMINE WHETHER THE AGGRIEVED PERSONS' WORK RECORDS JUSTIFY THE DISCIPLINARY ACTION TAKEN BY THE RESPONDENT. OUR FUNCTION IS TO DETERMINE WHETHER THE RESPONDENT HAS CONTRAVENED ANY OF THE PROVISIONS OF THE LABOUR RELATIONS ACT IN EFFECTING THE DISCHARGE OF THE AGGRIEVED PERSONS. HAVING REGARD TO ALL THE EVIDENCE AND FOR THE REASONS SET OUT ABOVE, WE FIND THAT THE COMPLAINANT HAS FAILED TO ESTABLISH THAT THE RESPONDENT HAS CONTRAVENED THE PROVISIONS OF THE LABOUR RELATIONS ACT AND WE ACCORDINGLY FIND THAT THE COMPLAINANT HAS FAILED TO ESTABLISH THE MOST ESSENTIAL INGREDIENT OF THIS CASE.

9. THE COMPLAINT IN THIS MATTER IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER O. HODGES: FEBRUARY 23, 1970.

I DISSENT. I WOULD FIND THAT THE UNION ACTIVITY OF THE AGGRIEVED PERSONS WAS NOT ONLY THE MOTIVATING CAUSE OF THEIR DISMISSAL BUT WAS THE REAL REASON FOR THEIR DISCHARGE.

16990-69-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) V. O. & W. ELECTRONICS LIMITED (RESPONDENT).

BEFORE: Rory F. Egan, Vice-Chairman and Board Members O. Hodges and H. F. Irwin.

APPEARANCES AT THE HEARING: R. Russell and A. Jenkyn for the applicant; Michael Gordon and R. Bozeck for the respondent.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER O. HODGES: February 24, 1970.

1. This is a complaint under section 65 of The Labour Relations Act in which the complainant alleges that James E. Ives has been dealt with by the respondent contrary to the provisions of section 50 of the Act. The complainant requests that Ives be reinstated with payment for time lost.

2. Ives had worked for the respondent Company from December or 1966 until December of 1967, when he left on his own accord. He was rehired by the Company in April 1968 and came under supervision of Mr. Van Horne. He was employed as a store keeper and truck driver. In about March of 1968, new management took over the running of the Company, but Ives continued in his job as store keeper and truck driver. In July of 1969, Van Horne recommended that he be given an increase and this was implemented.

3. It would appear that prior to the coming of the new management, the Company stores had not been run in an inefficient manner. The new management, commencing in July 1969, introduced new methods of control and inventory with which Ives was instructed to comply.

4. A great deal of evidence was adduced by both parties to this dispute having to do with the competence or lack thereof of the aggrieved as a store keeper. The Company sought to establish a chronic disability on the part of Ives to adhere to the practices it prescribed for the efficient running of the stores. Reference was made to continual discrepancies between the actual inventories of goods and the written records or paper inventories. Two specific instances were offered as evidence highlighting and climaxing this incompetence. There is agreement as to the facts involved in the first of these occurrences. It involves the delivery of six immersion heaters to the Company on October 15th. Due, in part, although by no means wholly, to Ives' lack of caution, three of these heaters were thrown out in the garbage. Ives stated that he stayed away from work the following day because he was sure he would be discharged for his negligence.

5. A DAY OR SO BEFORE HE WAS DISCHARGED, THE SECOND INCIDENT TOOK PLACE. IT INVOLVED THE ISSUING TO THE PRODUCTION LINE BY IVES OF SNAP FASTENERS USED IN ELECTRIC CIRCUITS. THE REQUIREMENT WAS THAT THESE FASTENERS SHOULD BE INSPECTED BEFORE ISSUE TO PRODUCTION. IVES ISSUED TO THE PRODUCTION DEPARTMENT A BOX OF SOME 50,000 FASTENERS WHICH HAD NOT BEEN INSPECTED. THIS NEGLECT ON IVES' PART RESULTED IN A DELAY IN PRODUCTION WHILE THE INSPECTION WAS CONDUCTED. IT WAS VAN HORNE'S TESTIMONY THAT PRIOR TO THIS MATTER OF THE FASTENERS, HE HAD BEEN UNDER CONSIDERABLE PRESSURE TO GET RID OF IVES BECAUSE OF HIS GENERAL INEPTITUDE AND THE LOSS OF THE IMMERSION HEATERS. HE STATED, WITH REFERENCE TO THE CAUSE OF IVES' DISCHARGE THAT "WHAT REALLY DONE IT WAS OVER THESE FASTENERS".

6. IVES WAS DISMISSED BY THE COMPANY ON NOVEMBER 17, 1969, BY VAN HORNE ON INSTRUCTIONS FROM BOZECK. (REGINAL BOZECK IS THE GENERAL MANAGER OF THE COMPANY). APPROXIMATELY AT 3.45 P.M. HE WAS ESCORTED OFF THE PROPERTY BY VAN HORNE WHO INSTRUCTED THE SECURITY GUARD NOT TO ALLOW HIM BACK. IVES STATED THAT HE ASKED WHY HE WAS BEING FIRED AND THAT VAN HORNE TOLD HIM THAT IT WAS ON ACCOUNT OF IMMERSION HEATERS' INCIDENT, THE FASTERERS AND NUMEROUS OTHER REASONS. HE SAID THAT HE ASKED VAN HORNE TO EXPLAIN THE OTHER REASONS, BUT THE FORMER SIMPLY SAID TO HIM "YOU KNOW DAMN WELL THE SAME AS I DO". HE WAS GIVENCHEQUES COVERING HIS WAGES FOR THE PREVIOUS TWO WEEKS, HIS WAGES FOR NOVEMBER 17TH AND A CHEQUE COVERING HIS VACATION PAY AT THE TIME OF HIS DISCHARGE.

7. ON HIS RETURN TO HIS HOME, IVES' WIFE DISCOVERED THAT SOME OF THE CHEQUES WERE NOT SIGNED AND SHE TELEPHONED VAN HORNE TO INQUIRE ABOUT THE CHEQUES. (MRS. IVES FELD FREE TO CALL MR. VAN HORNE, AS THE VAN HORNES AND THE IVES WERE ON FRIENDLY TERMS AND WERE ACCUSTOMED TO VISITING IN EACH OTHERS' HOMES). ACCORDING TO HER TESTIMONY, MRS. IVES ASKED VAN HORNE, DURING THE COURSE OF HER TELEPHONE CONVERSATION, WHETHER IVES' UNION ACTIVITIES HAD ANYTHING TO DO WITH THIS DISCHARGE. SHE TESTIFIED THAT VAN HORNE SAID "YES, AND OTHER THINGS". SHE TESTIFIED FURTHER THAT HE SAID THAT "UPSTAIRS" HAD BEEN SUSPICIOUS OF IVES AND WERE WATCHING HIM AND THAT IVES HAD SIGNED UP SOME EMPLOYEES AT THE STORE ROOM WICKET ON THE PRECEDING FRIDAY AFTERNOON AND THAT ONE OF THESE PERSONS HAD GONE IMMEDIATELY UPSTAIRS TO MR. BOZECK. MRS. IVES FURTHER TESTIFIED THAT VAN HORNE TOLD HER THAT BOZECK BROUGHT THE EMPLOYEE'S RECEIPT INTO VAN HORNE'S OFFICE AND WAVING IT IN THE AIR SAID"WE HAVE CAUGHT THE .....". SHE TESTIFIED THAT VAN HORNE INDICATED TO BOZECK THAT HE DID NOT BELIEVE THAT IVES WAS INVOLVED WITH THE UNION AND THAT BOZECK'S RESPONSE WAS TO SHOW HIM THE RECEIPT WHICH BORE IVES' NAME.

8. THE IMMEDIATE OUTCOME OF THE CONVERSATION RELATED ABOVE WAS THAT IVES WAS TO BRING THE CHEQUES TO MR. VAN HORNE WHO WOULD SEE THAT THEY WERE SIGNED. IVES BROUGHT THE CHEQUES TO VAN HORNE. THE FOLLOWING IS A SUMMARY OF IVES' EVIDENCE AS TO WHAT OCCURRED BETWEEN HIMSELF AND VAN HORNE AT THIS MEETING. HE STATED THAT HE ASKED VAN HORNE THE DIRECT QUESTION AS TO WHETHER HE WAS FIRED FOR UNION ACTIVITY. HE SAID THAT VAN HORNE TOLD HIM THAT HE WAS DEFINITELY DISCHARGED FOR UNION ACTIVITY - THAT HE, IVES, HAD SIGNED UP AN EMPLOYEE ON FRIDAY AND THAT THAT EMPLOYEE HAD GONE DIRECTLY TO THE GENERAL MANAGER WHO HAD THEN COME IN TO VAN HORNE'S OFFICE AND SAID "WE'VE GOT HIM". IVES RELATED THAT VAN HORN SAID THAT HE DIDN'T BELIEVE WHAT BOZECK TOLD HIM AND THAT THE LATTER HAD BROUGHT THE EMPLOYEE CONCERNED INTO VAN HORNE'S OFFICE. HE ALSO STATED THAT VAN HORNE TOLD HIM THAT BOZECK WANTED IVES ESCORTED OFF THE PROPERTY IMMEDIATELY. VAN HORNE, IN HIS TESTIMONY, CONFIRMED THAT BOZECK WANTED IVES DISMISSED ON THE FRIDAY PRECEDING NOVEMBER 17TH, BUT THAT VAN HORNE, HAD, OVER BOZECK'S OBJECTIONS, REQUESTED THAT IVES BE PERMITTED TO COME IN TO WORK ON THE SATURDAY. NO REASON WAS ADVANCED FOR THIS REQUEST, NOR WAS THERE ANY EXPLANATION OFFERED AS TO WHY THE DISCHARGE DID NOT TAKE PLACE UNTIL AFTERNOON OF MONDAY, NOVEMBER 17TH.

9. THERE IS NO QUESTION WHATSOEVER THAT IVES DID SIGN UP EMPLOYEES FOR THE UNION AND THAT HE HAD IN FACT SIGNED UP PERSONS AT THE WICKET IN THE STORE ROOM ON THE FRIDAY BEFORE HIS DISCHARGE. THE COMPANY DENY THAT THIS WAS THE CAUSE OF HIS DISCHARGE.

10. IN HIS EVIDENCE, VAN HORNE AGREED THAT MRS. IVES, IN THE COURSE OF THE TELEPHONE CONVERSATION REFERRED TO ABOVE, ASKED HIM IF IVES HAD BEEN FIRED ON ACCOUNT OF UNION ACTIVITY. HE STATED THAT HIS REPLY WAS "I SAID NO, NOT ENTIRELY". HE THEN WENT ON TO SAY THAT WHEN HE WAS RETURNING TO THE PLANT AFTER HAVING ESCORTED IVES TO THE GATE, HE WAS APPROACHED BY SOME FOREMEN WHO, HE SAID, TOLD HIM THAT IVES HAD BEEN SIGNING UP UNION MEMBERS. HE STATED, HE WOULD HAVE BEEN OBLIGED TO REPORT THIS TO MANAGEMENT. IT WOULD APPEAR FROM THIS EVIDENCE THAT IVES' UNION ACTIVITIES WERE WELL-KNOWN TO OTHER SUPERVISORS PRIOR TO HIS DISCHARGE, AND IT IS DIFFICULT TO IMAGINE THAT IT HAD NOT BEEN REPORTED TO BOZECK, IF NOT TO VAN HORNE, BEFORE THAT TIME. VAN HORNE ALSO TESTIFIED THAT DURING THE CONVERSATION WITH IVES, WHEN THE LATTER CAME WITH THE CHEQUES, HE HAD SAID TO IVES "YOU SURE PUT ME IN A HELL OF A SPOT WITH MANAGEMENT".

11. IT SHOULD BE NOTED THAT THE EVIDENCE DISCLOSES THAT SUBSEQUENT TO THE INCIDENT OF THE IMMERSION HEATERS, THE COMPANY ADVERTISED FOR A SUPERVISOR FOR THE STORE ROOM. ONE WAS HIRED FOR A BRIEF PERIOD AND IVES WAS ADVISED THAT HE WAS NOT BEING

DISCHARGED, BUT THAT HE WAS BEING DEMOTED AND WAS GIVEN TO UNDERSTAND THAT HE WOULD WORK UNDER THE DIRECTION OF THE NEW SUPERVISOR. IN OUR OPINION, ON THE BASIS OF THE EVIDENCE, WE FIND THAT UP UNTIL FRIDAY PRECEDING HIS DISCHARGE, IT WAS NOT THE INTENTION OF THE COMPANY TO TERMINATE HIS EMPLOYMENT BUT RATHER SIMPLY TO DEMOTE HIM. WE ATTRIBUTE THIS TREATMENT BY THE COMPANY TO THE INTERVENTION OF VAN HORNE WHO WAS, AS NOTED, A FRIEND OF IVES.

12. HAVING ASSESSED THE CREDIBILITY OF THE WITNESSES, THE MANNER IN WHICH THEY TESTIFIED, AND THEIR DEMEANOUR IN THE WITNESS BOX, WE PREFER THE EVIDENCE OF THE COMPLAINANT'S WITNESSES TO THOSE OF THE RESPONDENT WHEREVER THEY CONFLICT. WE ARE PERSUADED ON THE BASIS OF ALL THE EVIDENCE THAT VAN HORNE'S ABILITY TO PRESERVE IVES' JOB WHILE SUFFICIENT TO PROTECT HIM IN THE CASE OF INCOMPETENCE, WAS NOT EXTENSIVE ENOUGH TO COVER THE MATTER OF RETALITATION FOR UNION ACTIVITY. IT IS OUR OPINION THAT WHEN VAN HORNE TOLD IVES "YOU HAVE PUT ME IN A HELL OF A SPOT", HE HAD REFERENCE TO THAT ACTIVITY. WE, THEREFORE, FIND THAT THE RESPONDENT DEALT WITH THE AGGRIEVED JAMES E. IVES CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

13. OUR DETERMINATION IS THAT JAMES E. IVES SHALL BE REINSTATED FORTHWITH IN THE POSITION HELD BY HIM AT THE TIME OF HIS DISCHARGE. HAVING REGARD TO THE EVIDENCE PRESENTED TO THE BOARD WITH RESPECT TO THE AMOUNT OF LOSS OF EARNINGS SUSTAINED BY THE AGGRIEVED PERSON AND HIS ATTEMPTS TO MITIGATE HIS LOSS, THE BOARD FURTHER DETERMINES THAT THE RESPONDENT PAY TO

JAMES E. IVES THE SUM OF $625.00

AS COMPENSATION FOR LOSS OF EARNINGS SUSTAINED BY HIM BETWEEN THE DATE OF HIS DISCHARGE AND DECEMBER 12, 1969, THE DATE OF THE FIRST HEARING IN THIS MATTER.

14. THE BOARD DIRECTS THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS IF ANY THAT JAMES E. IVES SUSTAINED BETWEEN DECEMBER 12, 1969 AND THE DATE OF HIS REINSTATEMENT BY THE RESPONDENT WHICH SHALL THEN BE PAID TO HIM. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT ABOVE REFERRED TO, WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE, AT THE REQUEST OF EITHER PARTY THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO ANY ADDITIONAL AMOUNT TO BE PAID TO JAMES E. IVES WHICH WILL THEREAFTER BE DETERMINED BY THE BOARD.

DECISION OF BOARD MEMBER H. F. IRWIN: FEBRUARY 24, 1970.

1. I DISSENT.

2. THE EVIDENCE ADDUCED AT THE HEARINGS IN THIS MATTER DISCLOSES THAT THE AGGRIEVED EMPLOYEE, JAMES E. IVES, HAD AN UNSATISFACTORY WORK RECORD DURING THE TIME HE HAS BEEN IN CHARGE OF THE STORE ROOM IN THE PLANT. IN FACT, THE COMPANY HAD ADVERTISED FOR A PERSON TO REPLACE HIM AS SUPERVISOR, BUT THIS REPLACEMENT HAD NOT AS YET TAKEN PLACE AT THE TIME OF HIS DISMISSAL.

3. HAVING REGARD TO ALL THE EVIDENCE ADDUCED AT THE HEARING, I AM SATISFIED THAT THE IMMEDIATE CAUSE OF IVES' DISMISSAL ON MONDAY, NOVEMBER 17TH, 1969 WAS HIS ACTIVITY ON BEHALF OF THE UNION IN "SIGNING UP" EMPLOYEES AT THE WICKET IN THE STORE ROOM ON FRIDAY, NOVEMBER 14TH. IN ADDITION, I MUST CONCLUDE FROM THE EVIDENCE THAT THIS UNION ACTIVITY ON IVES' PART WAS CARRIED ON DURING HIS NORMAL WORKING HOURS AND THOSE OF THE EMPLOYEES HE "SIGNED UP" AT THE STORE ROOM WICKET.

4. SECTION 53 OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

> "NOTHING IN THIS ACT AUTHORIZES ANY PERSON TO ATTEMPT AT THE PLACE AT WHICH AN EMPLOYEE WORKS TO PERSUADE HIM DURING HIS WORKING HOURS TO BECOME OR REFRAIN FROM BECOMING OR CONTINUING TO BE A MEMBER OF A TRADE UNION."

HAVING REGARD TO THE PROVISIONS OF THIS SECTION, I AM IMPELLED TO CONCLUDE THAT IVES WAS NOT EXERCISING A RIGHT UNDER THE ACT WHEN HE "SIGNED UP" THESE EMPLOYEES IN THE PLANT DURING THEIR WORKING HOURS. CONSEQUENTLY, THERE CAN BE NO VIOLATION OF THE ACT BY THE RESPONDENT AS ALLEGED BY THE COMPLAINANT AND I WOULD HAVE DISMISSED THE COMPLAINT.

17005-69-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) v. N. WEINGARTEN, ESQ. CARRYING ON BUSINESS UNDER THE CORRECT NAME OF SHOPPERS DRUG MART (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: CLIFFORD EVANS FOR THE APPLICANT AND J. B. NOONON FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER H. F. IRWIN: FEBRUARY 5, 1970.

1. THIS IS A COMPLAINT UNDER SECTION 65 IN WHICH THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON PETER AULD HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 65(6) OF THE LABOUR RELATIONS ACT AND REQUESTS THAT THE BOARD DIRECT THAT THE RESPONDENT EMPLOY THE AGGRIEVED EMPLOYEE AND PAY HIM ALL THE WAGES LOST.

2. SECTION 65(6) READS AS FOLLOWS:

> "WHERE THE MATTER COMPLAINED OF HAS BEEN SETTLED, WHETHER THROUGH THE ENDEAVOURS OF THE FIELD OFFICER OR OTHERWISE, AND THE TERMS OF THE SETTLEMENT HAVE BEEN PUT IN WRITING AND SIGNED BY THE PARTIES OR THEIR REPRESENTATIVES, THE SETTLEMENT IS BINDING UPON THE PARTIES, THE EMPLOYER OR OTHER PERSON AND THE TRADE UNION WHO HAVE AGREED TO THE SETTLEMENT AND SHALL BE COMPLIED WITH ACCORDING TO ITS TERMS, AND A COMPLAINT THAT THE EMPLOYER OR OTHER PERSON OR THE TRADE UNION WHO HAS AGREED TO THE SETTLEMENT HAD NOT COMPLIED WITH THE TERMS OF THE SETTLEMENT SHALL BE DEEMED TO BE A COMPLAINT THAT A PERSON HAS BEEN DEALT WITH CONTRARY TO THE ACT AS TO HIS EMPLOYMENT, OPPORTUNITY FOR EMPLOYMENT OR CONDITIONS OF EMPLOYMENT, AS THE CASE MAY BE."

3. IN SUPPORT OF ITS APPLICATION, THE COMPLAINANT FILED WITH THE BOARD THE FOLLOWING LETTER ADDRESSED TO MR. CLIFFORD EVANS, AN OFFICER OF THE COMPLAINANT:

> "PLEASE BE INFORMED THAT I AM PREPARED TO OFFER EMPLOYMENT FOR WHICH HE IS QUALIFIED, TO MR. PETER AULD, AS SOON AS A SUITABLE VACANCY ARISES. MR. AULD HAS BEEN IN THE STORE TO SEE ME, AND HAS ALSO BEEN INFORMED OF THIS.
>
> WILL YOU THEREFORE PLEASE CONFIRM THAT THE UNION WILL WITHDRAW THEIR SECTION 65 APPLICATION ON THIS MATTER."

THE LETTER IS SIGNED BY NORMAN WEINGARTEN, THE OWNER OF THE RESPONDENT, SHOPPERS DRUG MART. FOLLOWING RECEIPT OF THE LETTER, THE COMPLAINANT WITHDREW THE SECTION 65 APPLICATION REFERRED TO THEREIN.

4. WITH RESERVATIONS AS TO THE ADEQUACY OF THE FOREGOING LETTER AS A SETTLEMENT UNDER SECTION 65(6) WE FIND THAT THE EVIDENCE INDICATES THAT MR. AULD, AT THE TIME OF HIS TERMINATION, HAD BEEN EMPLOYED AT NIGHT AS A STOCKROOM CLERK AND THAT HE WAS ALSO REQUIRED TO DO CERTAIN WORK IN THE STORE ITSELF SUCH AS PLACING STOCK ON SHELVES, ASSISTING CUSTOMERS, OCCASIONALLY HELPING IN PARCELLING CUSTOMERS' GOODS ON SUNDAYS, MINOR MAINTENANCE AND WHAT HE REFERRED TO AS SECURITY.

5. SUBSEQUENT TO THE TERMINATION OF AULD'S EMPLOYMENT, SEVERAL FEMALE EMPLOYEES WERE HIRED AS CASHIERS. THESE EMPLOYEES WERE ALSO REQUIRED TO DO A CERTAIN AMOUNT OF PARCELLING AND STRAIGHTENING OF SHELVES AND SOME WORK IN THE COSMETICS DEPARTMENT. THERE IS NO DOUBT, HOWEVER, THAT THE PRINCIPLE REASON FOR THEIR EMPLOYMENT WAS TO ACT AS CASHIERS.

6. THERE ARE NOW WORKING IN THE STOCKROOM A STOCK MANAGER, ERIC EATON, AND AN EMPLOYEE RICK MARSH, BOTH OF WHOM WORK DURING THE DAY ONLY. MARSH WAS EMPLOYED AS A DAYTIME STOCKMAN PRIOR TO AULD'S TERMINATION. THE EVIDENCE IS THAT THE EFFICIENCY IN THE STOCKROOM HAS REACHED THE POINT WHERE THESE TWO EMPLOYEES ARE CAPABLE OF TAKING CARE OF ALL THE WORK AND THERE IS NO NECESSITY TO HAVE AN EMPLOYEE IN THE STOCKROOM AT NIGHT, SO THAT IT WOULD APPEAR THAT THE JOB FORMERLY DONE BY AULD IN THE STOCKROOM IS NO LONGER IN EXISTENCE.

7. WE ARE SATISFIED ON THE EVIDENCE THAT WHILE CERTAIN TASKS WHICH WERE ANCILLARY TO THE MAIN JOB OF NIGHT STOCKMAN, ARE NOW DISTRIBUTED AMONG SOME OF THE EMPLOYEES HIRED AS CASHIERS, THE PRINCIPLE WORK FOR WHICH AULD WAS HIRED NO LONGER EXISTS. WE ARE UNABLE TO FIND ON THE EVIDENCE, MOREOVER, THAT A SUITABLE VACANCY FOR WHICH MR. AULD IS QUALIFIED HAS ARISEN SINCE THE DATE OF THE ABOVE CITED LETTER. FOR THAT REASON, THE COMPLAINT MUST BE DISMISSED.

8. AS INDICATED ABOVE, THERE IS CONSIDERABLE DOUBT AS TO WHETHER THE DOCUMENT FILED AS AN AGREEMENT UNDER SECTION 65(6) DOES IN FACT COMPLY WITH THE REQUIREMENTS OF THAT SUBSECTION. UNDER THE SUBSECTION, THE SETTLEMENT MUST BE IN WRITING AND MUST BE SIGNED BY THE PARTIES OR THEIR REPRESENTATIVE IN ORDER TO BE BINDING UPON THE PARTIES AND IN ORDER TO MAKE IT A PROPER BASIS FOR A COMPLAINT UNDER SECTION 65(6). THE AGREEMENT FILED IN THIS INSTANCE IS, AS ALREADY NOTED, SIGNED ONLY BY THE EMPLOYER AND THEREFORE LACKS WHAT APPEARS TO BE ONE OF THE ESSENTIAL REQUIREMENTS. IT IS TO BE NOTED THAT THE UNION COMPLIED WITH THE TERMS OF THE AGREEMENT AND THAT THE APPARENT DEFECTS IN THE DOCUMENT FILED WERE NOT RELIED UPON OR REFERRED TO BY THE RESPONDENT. NEVERTHELESS, THERE REMAINS THE SERIOUS QUESTION

CONCERNING WHICH, OF COURSE, WE HEARD NO ARGUMENT, AS TO WHETHER THE DOCUMENT WOULD, IN THESE CIRCUMSTANCES, BE SUFFICIENT TO SUPPORT THE APPLICATION WERE WE TO FIND OTHERWISE THAN WE HAVE ON THE MERITS OF THE CASE OR WHETHER THE APPLICATION OUGHT TO BE DISMISSED BECAUSE OF THE DEFICIENCY.

DECISION OF BOARD MEMBER O. HODGES: FEBRUARY 5, 1970.

I DISSENT.

THE WRITTEN AGREEMENT OFFERED BY MR. WEINGARTEN IN CONFORMATION OF AN UNDERSTANDING WITH THE UNION TO WITHDRAW THE SECTION 65 CASE THEN PENDING BEFORE THE BOARD, WAS ACTED UPON BY THE UNION IN GOOD FAITH.

MR. AULD, THE AGGRIEVED, WORKED NIGHTS DURING THE SCHOOL VACATION. I FIND THAT HE IS ENTITLED TO BE GIVEN THE FIRST OPPORTUNITY TO WORK AT A SIMILAR JOB SHOULD SUCH EMPLOYMENT BECOME AVAILABLE.

INDEXED ENDORSEMENT - SECTION 47A

16997-69-M: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. RONER CONSTRUCTION LIMITED; MIRON-WIGGERS CONSTRUCTION LIMITED; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1071; LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 597 (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: W. I. C. BINNIE, EDWARD VANDERKLOET AND GERALD VANDEZANDE FOR THE APPLICANT; H. L. MORPHY FOR RONER CONSTRUCTION LIMITED; J. DONALD TEMPLEMEN FOR MIRON-WIGGERS CONST. LTD.; ALBERT LALONDE FOR LOCAL 1071; FRED BECKSTEAD FOR LOCAL 597.

DECISION OF THE BOARD: FEBRUARY 5, 1970.

. . .

2. THIS IS AN APPLICATION UNDER SECTION 47A OF THE LABOUR RELATIONS ACT IN WHICH THE APPLICANT SEEKS A DECLARATION THAT IT IS THE BARGAINING AGENT FOR CERTAIN EMPLOYEES OF RONER CONSTRUCTION LIMITED SAID BY THE APPLICANT TO BE A SUCCESSOR COMPANY TO MIRON-WIGGERS CONSTRUCTION LIMITED, WITH WHOM THE APPLICANT HAS A COLLECTIVE AGREEMENT COVERING A LIKE BARGAINING UNIT TO THAT CONCERNING WHICH IT SEEKS THE DECLARATION.

3. THE RESPONDENTS LAUNCHED A PRELIMINARY OBJECTION IN WHICH THEY TOOK THE STAND THAT THE BOARD IS WITHOUT JURISDICTION TO MAKE THE DECLARATION SOUGHT BY THE APPLICANT. THE RESPONDENTS ARGUES THAT THE BOARD, BEING A CREATURE OF STATUTE, IS LIMITED IN ITS POWERS TO THOSE SPECIFICALLY GIVEN TO IT UNDER THE PROVISIONS OF THE ORIGINATING STATUTE AND THAT THE LABOUR RELATIONS ACT CONTAINS NO PROVISIONS ENABLING THE BOARD TO ISSUE A DECLARATORY JUDGMENT SUCH AS THE APPLICANT HAS REQUESTED. THERE FOLLOWS A SUMMARY OF WHAT WE BELIEVE TO BE THE TWO MAIN POINTS OF THE RESPONDENT'S ARGUMENT IN THE ORDER IN WHICH THEY WERE PRESENTED. BOTH RAISE ISSUES NOT PREVIOUSLY DEALT WITH BY THE BOARD.

4. THE RESPONDENTS URGE THAT THE PROVISIONS OF SECTION 47A, UNDER WHICH THE APPLICANT PURPORTS TO MOVE, DOES NOTPROVIDE THE BOARD WITH THE POWER TO GRANT THE PARTICULAR RELIEF SOUGHT. IT TAKES THE VIEW THAT SECTION 47(A)(2) WHICH READS AS FOLLOWS:

> "WHERE AN EMPLOYER WHO IS BOUND BY OR IS A PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION OR ON BEHALF OF WHOSE EMPLOYEES A TRADE UNION HAS BEEN CERTIFIED AS BARGAINING AGENT OR HAS GIVEN OR IS ENTITLED TO GIVE NOTICE UNDER SECTION 11 OR 40 SELLS HIS BUSINESS, THE TRADE UNION CONTINUES, UNTIL THE BOARD OTHERWISE DIRECTS, TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE PERSON TO WHOM THE BUSINESS WAS SOLD IN THE LIKE BARGAINING UNIT IN THAT BUSINESS, AND THE TRADE UNION IS ENTITLED TO GIVE TO THE PERSON TO WHOM THE BUSINESS WAS SOLD A WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT, AND SUCH NOTICE HAS THE SAME EFFECT AS A NOTICE UNDER SECTION 11"

IS MERELY A STATEMENT OF EFFECT OR OF LAW CONSEQUENT UPON THE SALE OF A BUSINESS AND CONTAINS NO SPECIFIC GRANT OF POWER TO THE BOARD TO ISSUE A DECLARATORY JUDGMENT OR DECISION SUCH AS THE APPLICANT WANTS. A REVIEW OF THE WHOLE OF SECTION 47A REVEALS, THE RESPONDENTS ARGUE, THAT ONLY IN SUBSECTION (5)(B) THEREOF DOES THE WORD "DECLARE" APPEAR. THE PARTIES AGREED THAT SUBSECTION (5)(B) HAS NO RELEVANCE IN THE SITUATION UNDER REVIEW.

5. IN ANY EVENT, THE RESPONDENTS FURTHER ARGUE, THE EXERCISE OF ANY POWERS UNDER SECTION 47A IS SUBJECT TO AND CONDITIONAL UPON THE FACT THAT A SALE OF A BUSINESS HAS TAKEN PLACE. IN THE OPINION OF THE RESPONDENTS NEITHER SECTION 47A IN PARTICULAR, NOR THE ACT IN GENERAL, GIVES THE BOARD THE POWER TO DETERMINE WHETHER THE PREREQUISITE SALE HAS TAKEN PLACE.

6. That being the case, the respondents say the Board is precluded from making a decision as to whether a sale has occurred and consequently, of exercising whatever powers it may have been granted under section 47a which are dependent upon such a decision.

7. In support of their position, the respondents directed the attention of the Board to certain queries raised by Laskin J.A. in the course of his judgment in Regina v. Ontario Labour Relations Board, ex parte Kitchener Food Market (1966) 2 O.R. 513. This case dealt with an application for certiorari with respect to a report of the Ontario Labour Relations Board made to the Minister of Labour upon a reference to it by him under section 79a of The Labour Relations Act, and which concerned the provisions of section 47a of that Act. The passages of the judgment to which the Board was referred are as follows:

> "In the result, I hold that certiorari does not lie, and, accordingly, it is unnecessary to decide whether the Board's determination is reviewable, in the light of sections 79(1) and 80, as involving a matter collateral to jurisdiction. I am constrained, however, to make some observations on the obvious inquiry that arises from these reasons, which is this: Upon whom or upon what body does the task fall to make the initial decision on whether there has been a sale or not? In general, the Ontario Labour Relations Act confides to the Board initial determination of questions arising in the administration thereof. The successor union provisions of section 47 make this clear where rights thereunder are claimed, but this is not true with respect to the successor employer provisions of section 47a, so far as concerns the question whether existing bargaining rights continue against an alleged successor employer. Other questions that may arise on the assumed continuation of bargaining rights are confided to the Board, as is evident from section 47a(3), (4), (5), but not the basic question above-mentioned.
>
> It may well be that the Legislature assumed that it was enough to say in section 47a(2) that bargaining rights continue in the event of a sale, and that the limitation therein through the words "unless the Board otherwise directs"

> WAS AMPLE ENOUGH TO VEST THE BOARD WITH POWER TO DETERMINE WHETHER THERE WAS A SALE TO SUPPORT THE CONTINUATION. I NEED NOT DECIDE THIS, AND CONTENT MYSELF WITH POINTING OUT THAT THE PROCEDURE ORDAINED BY THE ACT FOR ASSERTION OF BARGAINING RIGHTS AGAINST AN ALLEGED SUCCESSOR EMPLOYER COULD RESULT IN BY-PASSING THE BOARD ALTOGETHER, AND LEAVING IT TO THE MINISTER AND TO THE COURTS TO MAKE THE BASIC DETERMINATION THAT THERE HAS BEEN A SALE FOR PURPOSES OF SECTION 47A."

8. IN SO FAR AS THE ABILITY OF THE BOARD TO ISSUE A DECLARATORY DECISION OR JUDGMENT UNDER THE TERMS OF 47A IS CONCERNED, WE ARE OF THE OPINION THAT, WHERE A SALE HAS TAKEN PLACE, THE BOARD HAS SUCH POWER. THE WORDS "UNTIL THE BOARD OTHERWISE DIRECTS" CLEARLY EMPOWER THE BOARD TO FIND THAT THE TRADE UNION CONCERNED EITHER CONTINUES OR DOES NOT CONTINUE TO BE THE BARGAINING AGENT AND TO SO DECLARE. IT SEEMS TO US THAT IN THIS CONTEXT, THE POWER TO DIRECT EMBODIES THE POWER TO DECLARE, BUT WITH ADDED OVERTONES OF ENFORCEABILITY. THE TERMS ARE OTHERWISE VIRTUALLY INTERCHANGEABLE.

9. WITH RESPECT TO THE OTHER BRANCH OF THE RESPONDENTS' ARGUMENT ON THE QUESTION OF JURISDICTION OF THE BOARD, IT IS, OF COURSE, OBVIOUS THAT SECTION 47A CONTAINS NO SPECIFIC GRANT OF POWER TO DETERMINE WHETHER A SALE HAS OCCURRED. THE QUERY PUT BY HIS LORDSHIP IN THE PASSAGES CITED ABOVE REMAINS, HOWEVER, A QUESTION AND AS SUCH LEAVES SOME DOUBT AS TO WHETHER THE BOARD HAS THE JURISDICTION TO MAKE THE INITIAL DECISION WITH RESPECT TO A SALE. THE BOARD IS OBLIGED, WE BELIEVE, TO RESOLVE THAT DOUBT IN THE MANNER IT IS PERSUADED IS BEST CALCULATED TO CARRY OUT THE MAIN PURPOSE AND INTENT OF THE LEGISLATION AS EXPRESSED IN SECTION 47A WHICH IS THE DETERMINATION OF BARGAINING RIGHTS IN THE EVENT OF SALE OF A BUSINESS. IT IS IN RESPONSE TO THIS OBLIGATION THAT WE ASSERT JURISDICTION TO MAKE THE DECISION ON THE QUESTION OF SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A AND THE PROVISIONS OF SECTION 79(1) OF THE ACT IN THIS MATTER. SECTION 79(1) READS AS FOLLOWS:

> "THE BOARD HAS EXCLUSIVE JURISDICTION TO EXERCISE THE POWERS CONFERRED UPON IT BY OR UNDER THIS ACT AND TO DETERMINE ALL QUESTIONSOF FACT OR LAW THAT ARISE IN ANY MATTER BEFORE IT, AND THE ACTION OR DECISION OF THE BOARD THEREON IS FINAL AND CONCLUSIVE FOR ALL PURPOSES, BUT NEVERTHELESS THE BOARD MAY AT ANY TIME,

> IF IT CONSIDERS IT ADVISABLE TO DO SO, RECONSIDER ANY DECISION, ORDER, DIRECTION, DECLARATION OR RULING MADE BY IT AND VARY OR REVOKE ANY SUCH DECISION, ORDER DIRECTION, DECLARATION OR RULING."

10. IN ADDITION TO THE SUBMISSIONS MADE BY THE RESPONDENT ON THE POINT OF JURISDICTION, THEY FURTHER REQUEST THE BOARD TO DISMISS THE APPLICATION BECAUSE, THEY ALLEGE, THE STATEMENT OF MATERIAL FACTS UPON WHICH THE APPLICANT RELIES DOES NOT CONTAIN ANY SUGGESTION OF A SALE. THE DEFINITION OF A SALE IN THE CONTEXT OF SECTION 47A IS SET OUT IN 47A(1)(B) IN THE FOLLOWING TERMS:

> '"SELLS" INCLUDES LEASES, TRANSFERS ANY ANY OTHER MANNER OF DISPOSITION, AND "SOLD" AND "SALE" HAVE CORRESPONDING MEANINGS.'

IT WOULD APPEAR TO US THAT IN THE LIGHT OF THE BREADTH OF THE FOREGOING DEFINITION, THE ALLEGATIONS OF THE APPLICANT THAT RONER CONSTRUCTION LIMITED WAS INCORPORATED BY THE ALLEGED PREDECESSOR MIRON-WIGGERS CONSTRUCTION LIMITED IN OCTOBER 1969 TO TAKE OVER THE LATTER'S CONTRACTS WITH WINCHESTER-WESTERN ARMS COMPANY LIMITED, IS SUFFICIENT, INITIALLY AT LEAST, TO BRING THE MATTER WITHIN THE PURVIEW OF SECTION 47A AND PUT THE RESPONDENTS ON NOTICE AS TO THE NATURE AND BASIS OF THE APPLICANT'S CASE.

INDEXED ENDORSEMENTS - JURISDICTIONAL DISPUTES

17009(A)-69-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (COMPLAINANT) V. ROCKWIN CONSTRUCTION LIMITED AND THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCALS 27, 3233, 681, 3227, 666 AND 1963 AND THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE AND F. GODDARD FOR THE COMPLAINANT, F. R. VON VEH AND S. MOELLER FOR THE RESPONDENT COMPANY, NO ONE FOR THE RESPONDENT UNIONS.

DECISION OF J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER E. BOYER: FEBRUARY 20, 1970.

1. THIS IS A COMPLAINT MADE UNDER SECTION 66 OF THE LABOUR RELATIONS ACT.

2. THE COMPLAINANT IS REQUESTING THAT THE BOARD MAKE A DIRECTION REQUIRING THE RESPONDENT ROCKWIN CONSTRUCTION LIMITED, ON ITS METEOROLOGICAL BUILDING PROJECT FOR THE DEPARTMENT OF TRANSPORT AT METROPOLITAN TORONTO TO ASSIGN ALL OF THE WORK INVOLVED IN THE RELEASING AND STRIPPING OF "BUILT-IN-PLACE" WALL FORMS BEING USED ON THE PROJECT WITH THE EXCEPTION OF THE HARDWARE TO MEMBERS OF THE COMPLAINANT UNION.

3. AT THE HEARING OF THE BOARD HELD ON JANUARY 26, 1970, FOR THE PURPOSE OF ENTERTAINING THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES IN CONNECTION WITH THE REQUEST OF THE COMPLAINANT FOR THE ABOVE DIRECTION, ONLY THE COMPLAINANT AND THE RESPONDENT COMPANY WERE REPRESENTED THE RESPONDENT CARPENTERS ADVISED THE BOARD THAT THEY HAD ELECTED NOT TO BE REPRESENTED AT THE HEARING.

4. COUNSEL FOR THE COMPLAINANT AND COUNSEL FOR THE RESPONDENT COMPANY AGREED THAT SINCE THE BOARD HEARING IN THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE, OLRB MONTHLY REPORT, NOVEMBER 1969, P. 1015, THERE HAD BEEN NO MATERIAL CHANGE IN THE PRACTICES FOLLOWED BY CONTRACTORS IN THE ASSIGNMENT OF THE WORK OF RELEASING AND STRIPPING "BUILT-IN-PLACE" WALL FORMS IN THE METROPOLITAN TORONTO AREA. COUNSEL FURTHER AGREED THAT THE SKILL, EFFICIENCY AND ECONOMY INVOLVED IN THE PERFORMANCE OF THE WORK IN DISPUTE HAD IN NO WAY ALTERED SINCE THE HEARING OF THE ABOVE COMPLAINT. COUNSEL ACCORDINGLY REQUESTED THAT THE BOARD APPLY THE FINDINGS AND CONCLUSIONS THAT IT ARRIVED AT WITH RESPECT TO THOSE FACTORS IN THE HYDRO CASE TO THE INSTANT COMPLAINT IN MAKING ITS DIRECTION. THE PARTIES ALSO AGREED THAT THE REGULAR PAST PRACTICE OF THE RESPONDENT COMPANY HAS BEEN TO ASSIGN ALL OF THE WORK INVOLVED IN THE RELEASING AND STRIPPING OF "BUILT-IN-PLACE" WALL FORMS, WITH THE EXCEPTION OF THE HARDWARE, TO MEMBERS OF THE COMPLAINANT UNION AND THAT THE REMOVAL OF THE HARDWARE HAD BEEN ASSIGNED TO CARPENTERS. COUNSEL FOR THE RESPONDENT COMPANY ADVISED THE BOARD THAT THE WORK ASSIGNED TO THE MEMBERS OF THE COMPLAINANT INCLUDED THE REMOVAL OF THE PLYWOOD SHEETS FROM THE CONCRETE SURFACE OF WALLS. IN VIEW OF THE LATTER PRACTICE OF THE RESPONDENT COMPANY, COUNSEL FOR THE COMPLAINANT URGED THE BOARD TO DEPART FROM THE DIRECTION MADE IN THE HYDRO CASE TO THE EXTENT OF ASSIGNING THE ACTUAL REMOVAL OF THE PLYWOOD SHEETS TO MEMBERS OF THE COMPLAINANT UNION.

5. HAVING CONSIDERED THE REPRESENTATIONS OF COUNSEL, THE BOARD IS NOT PREPARED IN THE INSTANT COMPLAINT TO DEPART FROM ITS EARLIER DIRECTION INVOLVING THE SAME WORK ASSIGNMENT DISPUTE. THE BOARD ACCORDINGLY DIRECTS THAT ROCKWIN CONSTRUCTION LIMITED MAKE THE FOLLOWING WORK ASSIGNMENT WITH REGARD TO THE RELEASING AND STRIPPING OF "BUILT-IN-PLACE" WALL FORMS BEING USED ON ITS METEOROLOGICAL BUILDING PROJECT FOR THE DEPARTMENT OF TRANSPORT AT METROPOLITAN TORONTO:

1. THE RELEASING OF ALL HARDWARE, THE CUTTING OF MATERIAL, AND THE REMOVAL OF THE PLYWOOD SHEETING FROM THE CONCRETE SURFACE OF THE WALL SHALL BE ASSIGNED TO MEMBERS OF THE RESPONDENT CARPENTERS' UNIONS.

2. THE DISMANTLING OF THE REMAINDER OF THE FORMS SHALL BE ASSIGNED TO MEMBERS OF THE COMPLAINANT LABOURERS' UNION.

DECISION OF BOARD MEMBER R. W. TEAGLE: FEBRUARY 20, 1970.

I FIND NO REASON TO DEPART FROM MY DISSENTING DECISION IN BOTH THE HYDRO CASE AND THE FRASER-BRACE ENGINEERING COMPANY LIMITED CASE, OLRB MONTHLY REPORT, JANUARY 1969, P. 1087. ACCORDINGLY, FOR THE REASONS GIVEN IN MY DECISION IN THE LATTER CASE, I WOULD ASSIGN ALL OF THE WORK INVOLVED IN THE DISMANTLING OF "BUILT-IN-PLACE" WALL FORMS BEING USED ON THE PROJECT WITH WHICH WE ARE CONCERNED IN THE INSTANT COMPLAINT TO MEMBERS OF THE COMPLAINANT UNION.

17110(A)-69-JD: FRASER-BRACE ENGINEERING COMPANY, LIMITED, SUDBURY, ONTARIO (COMPLAINANT) V. INTERNATIONAL BROTHERHOOD OF BOILERMAKERS IRON SHIP BUILDERS BLACKSMITHS FORGERS & HELPERS, LOCAL 128 AND INTERNATIONAL ASSOCIATION BRIDGE STRUCTURAL ORNAMENTAL IRON WORKERS, LOCAL 786 (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: B. W. BINNING, D. STEVENS FOR THE COMPLAINANT; G. W. ALLEN FOR LOCAL 786 OF INTERNATIONAL ASSOCIATION BRIDGE STRUCTURAL ORNAMENTAL IRON WORKERS; S. E. PETRONSKI, M. BAKER FOR INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, LOCAL 128.

DECISION OF THE BOARD: FEBRUARY 13, 1970.

1. THIS IS A COMPLAINT UNDER SECTION 66 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT SEEKS TO HAVE THE BOARD ISSUE A DECLARATION WITH RESPECT TO THE ASSIGNMENT OF CERTAIN WORK CONCERNING WHICH THERE IS A DISPUTE BETWEEN THE RESPONDENT UNIONS.

2. THE WORK IN DISPUTE INVOLVES THE INSTALLATION ON THE COMPLAINANT'S FALCONBRIDGE NICKEL MAINES IRON ORE PROJECT OF A COOLER COLLECTING TROUGH FOR THE PURPOSE OF COLLECTING WATER SLUICED OVER THE ROTARY COOLER BARREL.

3. THERE WAS FILED AT THE HEARING A COPY OF A JOINT AGREEMENT BETWEEN INTERNATIONAL BROTHERHOOD OF BOILER MAKERS IRON SHIP BUILDERS BLACKSMITHS FORGERS & HELPERS, LOCAL 128 HEREINAFTER CALLED THE BOILERMAKERS, AND INTERNATIONAL ASSOCIATION BRIDGE STRUCTURAL ORNAMENTAL IRON WORKERS, LOCAL 786, HEREINAFTER CALLED THE IRONWORKERS, IN WHICH THE PARTIES TO THE AGREEMENT HAVE SET OUT THE WORK RECOGNIZED AS COMING UNDER THEIR RESPECTIVE JURISDICTIONS.

4. THE WORK WHICH THE PARTIES AGREE COMES UNDER THE JURISDICTION OF THE BOILERMAKERS, IS SET OUT IN SECTIONS RUNNING FROM SECTION 1 TO SECTION 6 INCLUSIVE. THE RELEVANT SECTION IN THIS MATTER IS SECTION 3 WHICH READS AS FOLLOWS:

> "SECTION 3. PONTOONS, PURIFYING BOXES, GAS GENERATORS AND WASH TANKS OR SCRUBBERS, STAND-PIPES, BREWERY VATS (EXCEPT GLASS ENAMELED TANKS), WATER TOWER (EXCEPT STRUCTURAL FRAMES AND BALCONIES), ALL IRON AND STEEL PIPE LINE, PENSTOCK AND FLUME WORK, STEAM, AIR, GAS, OIL, WATER, OR OTHER LIQUID TANKS OR CONTAINERS REQUIRING TIGHT JOINTS, INCLUDING TANKS OF RIVETED, CAULKED OR WELDED CONSTRUCTION IN CONNECTION WITH SWIMMING POOLS."

5. THE WORK AGREED UPON AS FALLING WITHIN THE JURISDICTION OF THE IRONWORKERS IS SET OUT IN A SEPARATE GROUP OF SECTIONS. THESE ARE NUMBERED FROM SECTION 1 TO SECTION 7 INCLUSIVE. THE RELEVANT SECTION AMONG THOSE HAVING REFERENCE TO THE IRONWORKERS' JURISDICTION IS SECTION 1. IT IS IN THE FOLLOWING TERMS:

> "SECTION 1. THE ERECTION AND CONSTRUCTION OF ALL IRON, STEEL AND ORNAMENTAL IRON ENTERING INTO THE ERECTION AND CONSTRUCTION OF THE FOLLOWING: BUILDINGS, BRIDGES, VIADUCTS, SUBWAYS AND TUNNELS, TOWERS, HOISTS, CAR DUMPERS, CRANES, COAL CONVEYORS, ORE UNLOADERS, STOKERS, SUPPORTS FOR BOILERS, COAL BINS AND HOPPERS ASH CHUTES AND HOPPERS, ROCK, COKE, SAND AND ORE BINS AND HOPPERS, KILNS, DRIERS, COOLERS, CRUSHERS, MIXERS, PULVERIZERS, ROASTERS, ALL CAISSON WORK, SAFE DEPOSIT BOXES, VAULTS, VESTIBULES AND DOORS, GLASS ENAMELED TANKS, MALT DRUMS, FANS, AND HOT ROOMS AND VENTILATORS INCLUDING AIR DUCTS IN CONNECTION THEREWITH, ALL SWIMMING POOLS (EXCEPT AS SPECIFIED IN SECTION 3 OF THE BOILERMAKERS' CLASSIFICATION OF WORK IN THIS AGREEMENT) AND THE WRECKING OF ALL THE ABOVE WORK SHALL BE DONE BY IRON WORKERS."

6. The Company initially made the assignment to the Boilermakers on the understanding that the structure was to comprise a closed cylinder. When it became aware that the structure was an open trough affair, the Company assigned the work connected therewith to the Ironworkers. It is with respect to this latter assignment that the dispute arose.

7. The evidence is that the Company was unable to get agreement from the unions as to who should perform the work and assigned it to the Ironworkers on the basis of the word "coolers" found in Section 1 of that part of the Agreement relating to work within the Ironworkers' jurisdiction. There is no doubt that the work falls within the competence of both of the contending unions. It was agreed that the structure under consideration was unique.

8. It is the contention of the Boilermakers that the work properly falls within the ambit of Section 3 of that part of the Agreement which sets out their jurisdiction. In particular, they rely upon the word "other liquid tanks or containers requiring tight joints". The Ironworkers support the assignment made by the Company on the basis of the word "cooler" in the Agreement.

9. On the basis of all of the evidence adduced at the hearing, together with the submissions of the parties, the Board finds that the work in question falls within the ambit of the work of the Boilermakers as set out in the joint agreement. The Board, accordingly, directs the Complainant, Fraser-Brace Engineering Company, Limited, to assign the work involved in the installation on the complainant's Falconbridge Nickel Mines Iron Ore Project of the cooler collecting trough to International Brotherhood of Boilermakers Iron Ship Builders Blacksmiths Forgers & Helpers, Local 128.

17338(A)-69-JD: Labourers' International Union of North America, Local 506 (Complainant) v. International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 721, Beer Precast Concrete Limited and E.G.M.Cape & Company Ltd. (Respondents).

BEFORE: J. H. Brown, Q.C., Alternate Chairman, and Board Members E. Boyer and R. W. Teagle.

APPEARANCES AT THE HEARING: R. Koskie, R. Ford and M. J. Reilly for the complainant, Mrs. J. E. Sigurdson and A. MacIsaac for Iron Workers Local Union 721, W. A. White for Beet Precast, B. W. Binning, F. R. von Veh and J. W. McNaughton for E.G.M. Cape.

DECISION OF THE BOARD: February 13, 1970.

1. THIS IS A COMPLAINT MADE UNDER SECTION 66 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT IS REQUESTING THAT THE BOARD ISSUE AN INTERIM ORDER WITH RESPECT TO A WORK ASSIGNMENT DISPUTE.

2. AFTER CONSIDERING THE REPRESENTATIONS OF THE PARTIES, THE BOARD ORALLY DELIVERED THE FOLLOWING DECISION:

> BEER PRECAST CONCRETE LIMITED (HEREINAFTER REFERRED TO AS BEER) ON JANUARY 21, 1970 ASSIGNED WORK INVOLVED IN THE ERECTION OF PRECAST CONCRETE ARCHITECTURAL UNITS BEING USED ON THE CANADA LIFE PLACE PROJECT IN METROPOLITAN TORONTO TO MEMBERS OF THE COMPLAINANT UNION.
>
> THE COMPLAINANT ALLEGES THAT AS A RESULT OF THIS ASSIGNMENT, AT A MEETING WITH THE GENERAL SUPERINTENDENT OF E.G.M. CAPE & COMPANY LTD. (HEREINAFTER REFERRED TO AS CAPE) ON JANUARY 26TH, ALAN MACISAAC, BUSINESS MANAGER OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721, (HEREINAFTER REFERRED TO AS LOCAL 721) INTER ALIA THREATENED TO CAUSE CERTAIN RODMEN EMPLOYED ON THE PROJECT TO ENGAGE IN AN UNLAWFUL STRIKE. ACCORDING TO THE MATERIAL FACTS ALLEGED BY THE COMPLAINANT, CAPE THEREUPON REQUIRED BEER TO ASSIGN TWO MEMBERS OF LOCAL 721 TO PERFORM WORK INVOLVED IN THE ERECTION OF PRECAST CONCRETE ARCHITECTURAL UNITS ON THE PROJECT. BEER, IN FACT, COMPLIED WITH THE REQUIREMENT OF CAPE AND MADE THE SAID ASSIGNMENT.
>
> SUBSECTION (2) OF SECTION 66 OF THE ACT READS:
>
> > WHERE A COMPLAINT IS MADE UNDER SUBSECTION 1 AND THE COMPLAINANT ALLEGES THAT A STRIKE IS IMMINENT OR IS TAKING PLACE BY REASON OF THE REQUIREMENT AS TO THE ASSIGNMENT OF WORK OR BY REASON OF THE ASSIGNMENT OF WORK, THE BOARD MAY, AFTER CONSULTING ANY EMPLOYER, EMPLOYERS' ORGANIZATION, TRADE UNION OR COUNCIL OF TRADE UNIONS THAT IN ITS OPINION IS CONCERNED, MAKE SUCH INTERIM ORDER WITH RESPECT TO THE ASSIGNMENT OF THE WORK AS IT IN ITS DISCRETION DEEMS PROPER.

THE COMPLAINANT HAS ALLEGED THAT A STRIKE IS IMMINENT ON THE PART OF LOCAL 721 BY REASON OF THE ORIGINAL ASSIGNMENT MADE

BY BEER, THAT IS, THE ASSIGNMENT TO MEMBERS OF THE COMPLAINANT OF WORK INVOLVED IN THE ERECTION OF PRECAST CONCRETE ARCHITECTURAL UNITS. THE COMPLAINANT, HOWEVER, DID NOT ALLEGE THAT A STRIKE IS IMMINENT OR TAKING PLACE BY REASON OF THE WORK ASSIGNMENT WHICH IS THE SUBJECT MATTER OF THIS DISPUTE, NAMELY THE ASSIGNMENT OF TWO MEMBERS OF LOCAL 721 TO DO WORK INVOLVED IN THE ERECTION OF PRECAST CONCRETE ARCHITECTURAL UNITS. MOREOVER, COUNSEL FOR LOCAL 721 ADVISED THE BOARD THAT NO STRIKE IS IMMINENT ON THE PART OF LOCAL 721 BY REASON OF THE PRESENT WORK ASSIGNMENT.

IN THESE CIRCUMSTANCES, HAVING REGARD TO THE LANGUAGE OF SUBSECTION (2) OF SECTION 66 OF THE ACT, THE BOARD FINDS THAT IT IS WITHOUT JURISDICTION TO ISSUE AN INTERIM ORDER IN THIS MATTER.

INDEXED ENDORSEMENTS - SECTION 79(2)

16020-69-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES - CLC, ONTARIO-HYDRO EMPLOYEES UNION, LOCAL 1000 (APPLICANT) v. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG AND R. B. RICHARDSON FOR THE APPLICANT, F. G. HAMILTON, H. GRIFFIN AND H. ROSSMAN FOR THE RESPONDENT.

DECISION OF J. E. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE: FEBRUARY 19, 1970.

1. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 79(2) OF THE LABOUR RELATIONS ACT.

2. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED DECEMBER 12, 1969, AS AMENDED BY THE SUPPLEMENTARY REPORTS OF THE EXAMINER DATED JANUARY 8, 1970 AND JANUARY 12, 1970, ANDWHEN SUCH EVIDENCE IS CONSIDERED IN THE LIGHT OF THE CRITERIA ENUNCIATED BY THE BOARD IN THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE, OLRB MONTHLY REPORT, AUGUST 1969, P. 669, WE FIND THAT FRASER J. DAY, WHO IS EMPLOYED IN THE TRAINING SECTION OF THE MANAGEMENT SERVICE DEPARTMENT AND IS ENGAGED IN, AMONG OTHER THINGS, GIVING LECTURES TO WORK STUDY TECHNICIANS, DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT. AS INDICATED IN THE CASE REFERRED TO ABOVE, THE BOARD FOUND THAT WORK STUDY TECHNICIANS WERE EMPLOYEES OF THE RESPONDENT

FOR THE PURPOSES OF THE ACT. MR. DAY WAS HIRED AS A WORK STUDY TECHNICIAN AND APPARENTLY BECAUSE OF HIS PROFICIENCY WAS REQUIRED BY THE RESPONDENT TO FUNCTION AS A TRAINER FOR OTHER WORK STUDY TECHNICIANS. THIS TRAINING OR TEACHING FUNCTION IS NOT A MANAGERIAL FUNCTION PER SE. WHILE MR. DAY HAS CERTAIN INCIDENTAL POWERS TO MAKE RECOMMENDATIONS, SUCH RECOMMENDATIONS MUST BE ACTED UPON BY OTHER PERSONS IN MANAGEMENT AND SUCH MANAGERIAL PERSONS ARE NOT BOUND BY THE RECOMMENDATIONS MADE BY MR. DAY.

3. IN VIEW OF ALL THE EVIDENCE, WE MUST ACCORDINGLY FIND, AS INDICATED ABOVE, THAT MR. DAY DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

4. THE BOARD FURTHER FINDS ON ALL THE EVIDENCE THAT MARY H. LAWSON IS EMPLOYED IN A CONFINDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY IS NOT AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

5. WE FURTHER FIND THAT WILLIAM JOHN GOTT, A PERSON CLASSIFIED AS ASSISTANT TO POWER TRANSFORMER SPECIALIST, ROBERT CLIFTON, A PERSON CLASSIFIED AS ASSISTANT TO MAINTENANCE ENGINEER - SWITCHGEAR, AND EDWARD WILLIAM O'BRIEN, A PERSON CLASSIFIED AS ASSISTANT TO MAINTENANCE ENGINEER, EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY ARE NOT EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT. IN ARRIVING AT THIS DECISION, THE BOARD NOTES THE EVIDENCE THAT THE FIRST PERSON WAS PROMOTED TO HIS PRESENT POSITION FROM THE HIGHEST NON-MANAGERIAL CLASSIFICATION COVERED BY THE COLLECTIVE AGREEMENT REPRESENTED BY THE APPLICANT UNION, AND THE OTHER TWO PERSONS WERE PROMOTED TO THEIR PRESENT POSITIONS FROM MANAGERIAL POSITIONS HELD BY THEM WHICH WERE NOT INCLUDED IN THE BARGAINING UNIT REPRESENTED BY THE APPLICANT. WHEN THE EVIDENCE RELATING TO THE DUTIES AND RESPONSIBILITIES OF THE THREE PERSONS IS CONSIDERED, AND BOTH PARTIES SUGGESTED THAT SUCH EVIDENCE BE CONSIDERED TOGETHER, WE FIND THAT WHILE THE THREE PERSONS DO NOT REGULARLY HAVE EMPLOYEES UNDER THEIR DIRECT AUTHORITY AND CONTROL, THEY ARE REQUIRED TO GIVE SUPERVISION AND DIRECTION TO EMPLOYEES OF THE RESPONDENT WHILE MAINTENANCE WORK IS BEING PERFORMED IN THE FIELD. SUCH DIRECTION AND SUPERVISION IS EXERCISED BY THE THREE PERSONS THROUGH THE FIELD EMPLOYEES FOREMAN. IN ADDITION, ALL THREE PERSONS ARE REQUIRED TO MAKE RESPONSBILE DECISIONS IN MATTERS OF SUBSTANCE WITH RESPECT TO MATTER THAT ARE OF A MANAGERIAL NATURE.

WHEN THE TOTALITY OF THE EVIDENCE IS CONSIDERED, WE FIND THAT THE PREPONDERANCE OF THE FUNCTIONS PERFORMED BY MR. GOTT, MR. CLIFTON AND MR. O'BRIEN IS MANAGERIAL AND WE THEREFORE FIND THAT THEY ARE NOT EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

6. THIS APPLICATION IS WITHDRAWN ON THE AGREEMENT OF THE PARTIES WITH CONSENT OF THE BOARD WITH RESPECT TO N. GOEL, J. F. PATERSON, R. G. HOPKINS, K. W. RUSK, D. R. HOWE, M. W. JESSOP, W. C. YOUNG AND D. S. MACLEAN.

7. IN MAKING THE DETERMINATIONS AS SET OUT ABOVE, THE BOARD NOTES THAT THE EXAMINER'S REPORT, WHICH WAS COMPRISED OF 119 PAGES TOGETHER WITH CERTIN SCHEDULES AND EXHIBITS, WAS THE RESULT OF TWENTY-ONE MEETINGS CONVENED BY THE EXAMINER. IT IS READILY APPARENT FROM THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER THAT SOME OF THE EMPLOYEES EXAMINED ATTEMPTED TO AGGRANDISE THEIR POSITIONS. IT IS NOT SUGGESTED THAT THE WITNESSES INTENTIONALLY ATTEMPTED TO MISLEAD THE BOARD. IT WOULD SEEM THAT THE EXTENSIVE NATURE OF THE EXAMINATIONS AND CROSS-EXAMINATION OF THE WITNESSES, WHICH IS APPARENT NOT ONLY FROM THE REPORT ITSELF BUT FROM THE FACT THAT TWENTY-ONE MEETINGS WERE NECESSITATED IN ORDER TO COMPLETE THE INQUIRY, CONTRIBUTED TO MANY OF THE CONFLICTS WHICH APPEAR IN THE EVIDENCE OF SOME OF THE WITNESSES. HOWEVER, THE BOARD HAS ATTEMPTED TO RESOLVE THE CONFLICTS WHICH APPEAR IN ONE PART OF THE REPORT WITH EVIDENCE FROM OTHER PARTS OF THE REPORT WHICH TENDED TO CLARIFY AND EXPLAIN SUCH CONFLICTS.

DECISION OF BOARD MEMBER E. BOYER: FEBRUARY 19, 1970.

I DISSENT. HAVING REGARD TO ALL THE EVIDENCE, I WOULD FIND THAT MR. DAY, MRS. LAWSON, MR. GOTT, MR. CLIFTON AND MR. O'BRIEN DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND I WOULD ACCORDINGLY FIND THAT THEY ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT. HOWEVER, I ADOPT THE COMMENTS OF THE MAJORITY AS SET OUT IN PARAGRAPH #7 ABOVE.

17133-69-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE HASTINGS COUNTY BOARD OF EDUCATION (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: FEBRUARY 18, 1970.

1. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 79(2) OF THE LABOUR RELATIONS ACT.

2. THE APPLICANT HAS APPLIED FOR A DETERMINATION OF THE EMPLOYMENT STATUS OF ARNOLD MITCHELL. IT WAS THE RESPONDENT'S POSITION THAT MR. MITCHELL WAS EMPLOYED AS AN INDEPENDENT CONTRACTOR TO PERFORM CARETAKING FUNCTIONS AT ONE OF THE RESPONDENT'S SCHOOLS.

3. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED JANUARY 28, 1970, IN THIS MATTER.

4. WHEN ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER IS VIEWED IN THE LIGHT OF THE FOUR TESTS ENUMERATED BY THE BOARD IN THE CANADA BREAD COMPANY LIMITED CASE, CCH CANADIAN LABOUR LAW REPORTER, ¶16,223, C.L.S. 76-807, AS CITED IN THE CIMA LIMITED CASE, OLRB MONTHLY REPORT, MAY 1963, P. 100, WE FIND THAT THE RESPONDENT HAS RETAINED THE NECESSARY ELEMENT OF CONTROL, THE OWNERSHIP OF TOOLS, AND THE METHOD OF PAYMENT TO MR. MITCHELL SO THAT THE ELEMENTS OF CHANCE OF PROFIT OR RISH OF LOSS ARE ABSENT FROM THE RELATIONSHIP BETWEEN THE RESPONDENT AND MR. MITCHELL. MR. MITCHELL'S ANNUAL REMUNERATION HAS BEEN PREDETERMINED AND THE CONTROL OVER HIS ACTIVITIES IS SUCH THAT HE CANNOT BE SAID TO BE AN INDEPENDENT CONTRACTOR. WHEN THE FOUR TESTS HAVE BEEN APPLIED, WE MUST DETERMINE THAT ARNOLD MITCHELL IS AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE LABOUR RELATIONS ACT.

17250-69-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 855 (APPLICANT) v. THE CORPORATION OF THE TOWN OF LINDSAY (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND R. W. TEAGLE.

DECISION OF THE BOARD: FEBRUARY 4, 1970.

1. THIS IS AN APPLICATION UNDER THE PROVISIONS OF SECTION 79(2) OF THE LABOUR RELATIONS ACT.

2. THE APPLICANT HAS REQUESTED THE BOARD TO DETERMINE WHETHER CHARLES WENSLEY IS AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT. THE RESPONDENT BY LETTER DATED JANUARY 29, 1970 STATED IN PART THAT "CHARLES WENSLEY...IS AN EMPLOYEE OF THE TOWN...".

3. In view of the position taken by the respondent, the Board declares that Charles Wensley is an employee of the respondent for the purposes of the Act.

4. It is pointed out, however, that since the issue between the parties is the question whether Mr. Wensley is an employee included in the collective agreement covering all employees of the respondent "in the works department", our declaration with respect to Mr. Wensley may not necessarily resolve that issue. It would appear that it is the respondent's position that the work now performed by Mr. Wensley is "not a function or work of the Board of Works of the Town of Lindsay". This Board has no jurisdiction under the provisions of section 79(2) to interpret the collective agreement in order to resolve the issue between the parties. Any dispute concerning Mr. Wensley's inclusion in the bargaining unit must be resolved pursuant to the provisions of the collective agreement in accordance with the method that the parties have agreed to under the terms of the collective agreement.

INDEXED ENDORSEMENT - SECTION 79A

17158-69-M: Local Union 1687, International Brotherhood of Electrical Workers (Trade Union) v. BUD BURKE PLUMBING, HEATING & ELECTRICAL SERVICE (Employer).

BEFORE: R. A. Furness, Vice-Chairman and Board Members P. J. O'Keeffe and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: L. Popovich for the applicant and W. F. Fitzgerald and B. Burke for the respondent.

DECISION OF THE BOARD: February 12, 1970.

1. This is a reference from the Minister of Labour pursuant to section 79A of The Labour Relations Act. The question referred by the Minister of Labour is whether he has the authority to appoint a conciliation officer.

2. In order to answer this question it is necessary to examine the various business ventures of Mr. Bud Burke in the plumbing, heating and electrical fields in the City of Sudbury during the past decade. In 1960 Bud Burke commenced business as a sole proprietor under the business style of Bud Burke Plumbing, Heating & Electric Service and filed a declaration as required by The Partnerships Registration Act. During the middle of 1962 he commenced a second business as a sole proprietor under the business style of M. G. Burke Electric Motor Sales & Service and filed a further declaration as

REQUIRED BY THE PARTNERSHIPS REGISTRATION ACT. EARLY IN 1963 HE COMMENCED A THIRD BUSINESS AS A SOLE PROPRIETOR UNDER THE BUSINESS STYLE OF BURKE'S BURNER SERVICE AND FILED A THIRD DECLARATION AS REQUIRED BY THE PARTNERSHIPS REGISTRATION ACT. ON FEBRUARY 25, 1963 A CORPORATION KNOWN AS M. G. BURKE INVESTMENTS LIMITED WAS INCORPORATED. SUBSEQUENT TO THIS INCORPORATION THE THREE SOLE PROPRIETORSHIPS REFERRED TO ABOVE WERE DISSOLVED AND WERE THEN RE-FORMED AS THREE SOLE PROPRIETORSHIPS UNDER THE SAME NAMES. HOWEVER, IN EACH CASE DECLARATIONS AS REQUIRED BY THE PARTNERSHIPS REGISTRATION ACT WERE FILED SHOWING THE SOLE PROPRIETOR AS M. G. BURKE INVESTMENTS LIMITED. THIS STATE OF AFFAIRS CONTINUES TO THE PRESENT TIME. THESE THREE SOLE PROPRIETORSHIPS HAVE ALWAYS CONFINED THEIR ACTIVITIES TO THE SERVICING AND REPAIRING OF PLUMBING, HEATING AND ELECTRICAL EQUIPMENT; THE SERVICING AND REBUILDING OF ELECTRIC MOTORS; AND THE SERVICING AND REPAIRING OF GAS BURNERS, RESPECTIVELY.

3. DURING THE EARLY MONTHS OF 1960 MR. BUD BURKE ALSO OPERATED A BUSINESS AS A SOLE PROPRIETOR UNDER THE BUSINESS STYLE OF BUD BURKE HEATING & ELECTRIC SERVICE AND HE FILED A DECLARATION AS REQUIRED BY THE PARTNERSHIPS REGISTRATION ACT. IN MAY, 1960, HE DECIDED TO ADD PLUMBING SERVICES TO HIS ACTIVITIES. IN ORDER TO MAKE THIS GENERALLY KNOWN HE COMMENCED A BUSINESS AS A SOLE PROPRIETOR UNDER THE BUSINESS STYLE OF BUD BURKE PLUMBING, HEATING & ELECTRIC SERVICE (REFERRED TO IN THE PRECEDING PARAGRAPH). THE SOLE PROPRIETORSHIP KNOWN AS BUD BURKE HEATING & ELECTRIC SERVICE BECAME DORMANT AFTER AUGUST, 1962, UNTIL TOWARDS THE END OF 1965 WHEN MR. BUD BURKE DECIDED TO SEEK CONTRACTS IN THE CONSTRUCTION INDUSTRY. HE DISCOVERED THAT IT WOULD BE NECESSARY TO EMPLOY UNION LABOUR BEFORE HE COULD BID ON ANY CONTRACTS IN THE CONSTRUCTION INDUSTRY. ACCORDINGLY, HE CONTACTED THE TRADE UNION AND ENTERED INTO A COLLECTIVE AGREEMENT WITH IT ON JANUARY 18, 1966. THIS COLLECTIVE AGREEMENT IS IN MIMEOGRAPHED FORM WITH THE EXCEPTION OF THE NAME OF THE EMPLOYER ENTITY TO IT, WHICH IS TYPED ON; THE SIGNATURES WRITTEN AT THE END OF THE COLLECTIVE AGREEMENT AND A CORRECTION TO THE NAME OF THE EMPLOYER ENTITY WHERE L. POPOVICH AND BUD BURKE HAVE WRITTEN THEIR SIGNATURES.

4. THE NAME OF THE EMPLOYER ENTITY AS ORIGINALLY TYPED ON THE COLLECTIVE AGREEMENT WAS "BUD BURKE PLUMBING, HEATING & ELECTRIC SERVICE". HOWEVER, THE WORD "PLUMBING" HAS BEEN STRUCK OUT AND IMMEDIATELY ADJACENT THERETO APPEAR THE SIGNATURES OF "BUD BURKE" AND "L. POPOVICH". THE COLLECTIVE AGREEMENT IS SIGNED BY "L. POPOVICH" ON BEHALF OF THE TRADE UNION AND BY "BUD BURKE" ON BEHALF OF "BUD BURKE HEATING & ELECTRICAL SERVICE."

IT WAS STATED BY MR. BUD BURKE AT THE HEARING, HOWEVER, THAT THE WORD "ELECTRICAL" WAS AN ERROR AND SHOULD READ ELECTRIC". THE TRADE UNION DID NOT CHALLENGE THIS SUBMISSION BY MR. BUD BURKE.

5. FURTHER CONFIRMATORY EVIDENCE THAT THE COLLECTIVE AGREEMENT IN QUESTION WAS BETWEEN THE TRADE UNION AND BUD BURKE HEATING AND ELECTRIC SERVICE IS TO BE FOUND IN A LETTER DATED JANUARY 18, 1966 FROM THE TRADE UNION UNDER THE SIGNATURE OF L. POPOVICH CLARIFYING THE CATEGORIES OF EMPLOYEES COVERED BY THE SAID COLLECTIVE AGREEMENT AND ADDRESSED TO BUD BURKE HEATING & ELECTRIC SERVICE. THIS LETTER WAS ORIGINALLY ADDRESSED TO BUD BURKE PLUMBING, HEATING & ELECTRIC SERVICE. HOWEVER, THE WORD "PLUMBING" WAS STRUCK OUT AND INITIALLED BY "L. POPOVICH". THE BOARD THEREFORE FINDS THAT THE COLLECTIVE AGREEMENT IN QUESTION WAS BETWEEN THE TRADE UNION AND BUD BURKE HEATING & ELECTRIC SERVICE.

6. MR. POPOVICH ARGUED AT THE HEARING THAT THERE WAS A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT AND THAT BUD BURKE PLUMBING, HEATING & ELECTRIC SERVICE IS A SUCCESSOR EMPLOYER OF BUD BURKE HEATING & ELECTRIC SERVICE. THE EVIDENCE REVEALED THAT BUD BURKE HEATING AND ELECTRIC SERVICE RECEIVED ITS ASSETS FROM MR. BUD BURKE IN HIS PERSONAL CAPACITY AND THAT UPON THE COMPLETION OF THE COMMERCIAL CONTRACT IN THE CONSTRUCTION INDUSTRY IN 1966, HE WITHDREW THESE PERSONAL ASSETS FROM HIS SOLE PROPRIETORSHIP OF BUD BURKE HEATING & ELECTRIC SERVICE. THERE WAS NO EVIDENCE OF A SALE OF ANY NATURE FROM BUD BURKE HEATING & ELECTRIC SERVICE TO BUD BURKE PLUMBING, HEATING & ELECTRIC SERVICE OR TO M. G. BURKE INVESTMENTS LIMITED.

7. HAVING REGARD TO THE FOREGOING, THE ANSWER TO THE QUESTION ASKED OF THE BOARD BY THE MINISTER OF LABOUR IS, "NO".

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

17286-69-R: PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL UNION 1891 (APPLICANT) v. ARCHITECTURAL ACOUSTICS & DRY WALL (RESPONDENT).

3. AT THE HEARING HELD IN CONNECTION WITH THIS APPLICATION FOR CERTIFICATION, SIGNED COPIES OF A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT WERE FILED WITH THE BOARD. THE AGREEMENT APPEARS TO BE EFFECTIVE FROM THE 1ST OF MAY, 1963. THE SIGNED COPIES DO NOT CONTAIN ACOMPLETED DURATION CLAUSE AND ACCORDINGLY, UNDER SECTION 39(1) OF THE LABOUR RELATIONS ACT, THE AGREEMENT

IS DEEMED TO BE IN OPERATION FOR A TERM OF ONE YEAR. THE AGREEMENT IN QUESTION CONTAINS AN AUTOMATIC RENEWAL CLAUSE ON FAILURE TO GIVE NOTICE. THE EVIDENCE IS THAT NOTICE WAS NOT GIVEN BY EITHER PARTY TO THE AGREEMENT.

4. AFTER CONSIDERING THE EVIDENCE BEFORE US AND THE REPRESENTATIONS OF THE PARTIES, WE ARE NOT SATISFIED THAT THE UNION HAS ABANDONED ITS BARGAINING RIGHTS UNDER THE COLLECTIVE AGREEMENT. ACCORDINGLY, THE AGREEMENT IN QUESTION WAS IN OPERATION ON THE DATE OF THE MAKING OF THIS APPLICATION, NAMELY, JANUARY 28, 1970 AND, HAVING REGARD TO THE PROVISIONS OF SECTION 5(2) OF THE LABOUR RELATIONS ACT, THE APPLICATION IS UNTIMELY AND MUST BE DISMISSED.

(FEBRUARY 13, 1970).

17330-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. MORRIS ELECTRIC (RESPONDENT).

5. THE APPLICANT AND THE RESPONDENT INFORMED THE BOARD THAT LOCAL NO. 1655 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS MIGHT CLAIM TO BE A BARGAINING AGENT OR CLAIM TO REPRESENT ANY EMPLOYEES WHO MAY BE AFFECTED BY THIS APPLICATION. THE RESPONDENT ALSO INFORMED THE BOARD THAT TO THE BEST OF ITS KNOWLEDGE THAT LOCAL 1655 HAD CEASED TO EXIST. LOCAL 1655 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS WAS SERVED WITH NOTICE OF THIS APPLICATION AND HAS INFORMED THE BOARD IN WRITING, THROUGH ITS INTERNATIONAL VICE-PRESIDENT, THAT IT DOES NOT MAKE ANY CLAIM IN REGARD TO THIS APPLICATION. THE APPLICANT HAS PROPOSED A BARGAINING UNIT CONSISTING OF ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF. THE LIST OF EMPLOYEES FILED BY THE RESPONDENT INDICATES THAT THE RESPONDENT EMPLOYED ONLY A JOURNEYMEN ELECTRICIAN AND AN APPRENTICE ELECTRICIAN ON THE DATE OF THE MAKING OF THE APPLICATION. HAVING REGARD TO THE PRINCIPLE ENUNCIATED IN THE WINTER & SON CASE, OLRB, M.R., FEB. 1967, P. 889 AND TO SECTION 6(1) OF THE LABOUR RELATIONS ACT, THE BOARD FURTHER FINDS THAT ALL ELECTRICIANS AND ELECTRICIANS APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
(FEBRUARY 13, 1970).

17358-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. BABCOCK & WILCOX CANADA LTD. (RESPONDENT).

6. The respondent claimed that a bargaining unit appropriate for collective bargaining should exclude "foremen and those above the rank of foreman". In paragraph 14(2) of its reply the respondent, while consenting to the application being disposed of by the Board without a hearing by the Board, states "The respondent opposes the term 'non-working foreman' on the basis that a conflict of interest could arise, such a foreman must be considered as supervisory and be exempt from the unit on the basis of the Labour Relations Act." The usual exclusions from craft bargaining units determined by the Board (such as the one the applicant is seeking in this case) are "non-working foremen and persons above the rank of non-working foreman". The Board's practice of including working foremen in craft bargaining units is based upon a long experience that persons so designated normally do not exercise managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act. Reference is made to the Uni-Form Builders Ltd. case, OLRB, M.R., March 1967, p. 1019; Pre-Con Murray Limited case, OLRB, M.R. Aug. 1965 p. 328 and the Sovereign Construction Company Limited case, OLRB, M.R., April 1967, p. 24. The attention of the parties is drawn to the provisions of section 79(2) of The Labour Relations Act.

(February 20, 1970).

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16625-69-R: International Union of District 50, U.M.W.A. (Applicant) v. Gord-Clanche Ltd. carrying on business under the correct name of Hicks Lumber & Wood Products Co. (Respondent). (18 employees).

(SEE INDEXED ENDORSEMENT PAGE 1431).

17100-69-R: Deluxe Upholstering Employees Association (Applicant) v. Deluxe Upholstering Limited (Respondent).

Unit: "all employees of the respondent at Waterloo, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period." (40 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 1442).

17154-69-R: International Woodworkers of America (Applicant) v. Hodgins Lumber Limited (Respondent).

Unit: "all employees of the respondent in the Township of Alice, in the County of Renfrew, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (2 employees in the unit).

17337-69-R: The Staff Association Waterloo County Health Unit (Applicant) v. Waterloo County Health Unit (Respondent).

Unit: "all employees of the respondent save and except Chief Public Health Inspector and persons above the rank of Chief Public Health Inspector, persons covered by a subsisting collective agreement between the respondent and the Nurses' Association Waterloo County Health Unit made on December 23, 1969, and persons regularly employed for not more than 24 hours per week." (22 employees in the unit).

The Board noted the agreement of the parties that persons classified as Senior Public Health Inspectors and Senior Dental Hygienist are included in the bargaining unit and that the person classified as Secretary to the Director is excluded from the bargaining unit.

17339-69-R: Draftsmen's Association of Ontario, Local 164, American Federation of Technical Engineers, A.F.L.-C.I.O., C.L.C. (Applicant) v. Canron Limited (Respondent).

Unit: "all draftsmen employed by the respondent in its Eastern Structural Division in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor and students employed during the school vacation period." (18 employees in the unit).

(Having regard to the submissions by the parties).

For the purpose of clarity the Board noted the agreement of the parties that graduate engineers who may be temporarily employed in the drafting department are not included in the bargaining unit.

17343-69-R: United Steelworkers of America (Applicant) v. Keystone Generator & Starter Rebuilders Limited (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (24 employees in the unit).

(See indexed endorsement page 1450).

17350-69-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Canada Bread, Division of Corporate Foods Limited (Respondent).

Unit: "all employees of the respondent at Georgetown, save and except route foremen, persons above the rank of route foreman, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (3 employees in the unit).

17351-69-R: Amalgamated Meat Cutters and Butcher Workmen of North America (Applicant) v. Paletta Brothers Meat Products Limited (Respondent).

Unit: "all employees of the respondent at Burlington, save and except foremen, persons above the rank of foreman, office and sales staff, person regularly employed for not more than 24 hours per week and students employ during the school vacation period." (52 employees in the unit).

17353-69-R: Labourers' International Union of North America, Local 506 (Applicant) v. Duracon Precast Industries Ltd. (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MALTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (12 EMPLOYEES IN THE UNIT).

17364-69-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE TOWN OF CARLETON PLACE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS SEWER-WATER, AND ROAD DEPARTMENTS, SAVE AND EXCEPT SUPERVISOR AND THOSE ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17368-69-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) v. ALEXANDRA HOSPITAL (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT INGERSOLL, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN ALEXANDRA HOSPITAL AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS DATED DECEMBER 27, 1967." (54 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

17371-69-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) v. MHV INDUSTRIES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF NEPEAN IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (24 EMPLOYEES IN THE UNIT).

17372-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. PRESCOTT AND RUSSELL COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (46 EMPLOYEES IN THE UNIT).

17383-69-R: Prince Edward Electrical Workers' Association (Applicant) v. Proctor-Lewyt Division of SCM (Canada) Limited (Respondent).

Unit: "all employees of the respondent at Picton, save and except foremen, persons above the rank of foreman, office and sales staff and students employed for the school vacation period." (153 employees in the unit).

17397-69-R: Labourers International Union of North America Local 837 (Applicant) v. Steed and Evans, a division of Steed and Evans Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Counties of Lincoln, Welland and Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (16 employees in the unit).

17402-69-R: Retail and Food Employees Local Union 175, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. The Great Atlantic and Pacific Tea Company, Limited (Respondent).

Unit: "all employees of the respondent at its retail stores at St. Thomas save and except head cashier and assistant store manager and those above the rank of head cashier and assistant store manager, meat department employees, persons regularly employed for not more than 24 hours per week and students employed in off school hours and during the school vacation period." (12 employees in the unit).

(for the purpose of clarity the Board noted the agreement of the parties that produce department head is included in the bargaining unit).

(having regard to the agreement of the parties).

17404-69-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. The George Taylor Hardware Limited, (A Division of Acklands Ltd.) (Respondent).

Unit: "all office and clerical employees of the respondent at Timmins, save and except office supervisor, persons above the rank of office supervisor, secretary to the manager, outside or territorial salesmen, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (11 employees in the unit).

(having regard to the agreement of the parties).

17405-69-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. The George Taylor Hardware Limited, (A Division of Acklands Ltd.) (Respondent).

Unit: "all employees of the respondent at its retail stores at Timmins, save and except assistant managers, persons above the rank of assistant manager, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (13 employees in the unit).

17406-69-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. The George Taylor Hardware Limited (A Division of Acklands Ltd.) (Respondent).

Unit: "all employees of the respondent at its warehouse at Timmins, save and except supervisors, persons above the rank of supervisor, office and sales staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (17 employees in the unit).

17407-69-R: Nurses' Association Alexandra Marine and General Hospital (Applicant) v. Alexandra Marine and General Hospital (Respondent).

Unit #1: "all registered and graduate nurses employed in a nursing capacity by the respondent at Goderich, save and except head nurses and those above the rank of head nurse and persons regularly employed for not more than 24 hours per week." (16 employees in the unit).

Unit #2: "all registered and graduate nurses regularly employed for not more than 24 hours per week in a nursing capacity by the respondent at Goderich, save and except head nurses and those above the rank of head nurse." (11 employees in the unit).

17412-69-R: International Brotherhood of Operative Potters (Applicant) v. Eastern Pottery Limited (Respondent).

Unit: "all employees of the respondent at Cornwall, save and except foremen, persons above the rank of foreman, office and sales staff." (7 employees in the unit).

(for the purpose of clarity the Board noted the agreement of the parties that the modeller and laboratory technician are not included in the bargaining unit).

17414-69-R: Labourers' International Union of North America, Local 183, (Applicant) v. D.N.E. Construction Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent within Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen, persons above the rank of non-working foreman and construction labourers engaged in building projects." (5 employees in the unit).

17418-69-R: Retail and Food Employees Local Union 175, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. The Great Atlantic and Pacific Tea Company, Limited (Respondent).

Unit: "all employees of the respondent at its retail stores at Niagara Falls, Ontario, regularly employed for not more than 24 hours per week and students employed in off school hours and during the school vacation period." (52 employees in the unit).

17419-69-R: Retail and Food Employees Local Union 175, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. M. Loeb (London) Limited, trading as Shoppers City, licensed operators of K Mart Foods (Respondent).

Unit: "all employees of the respondent employed at its retail stores at Chatham who are regularly employed for not more than 24 hours per week and students employed during the school vacation period." (49 employees in the unit).

17435-69-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Gerry Erkens (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in The Regional Municipality of Ottawa-Carleton and the United Counities of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

17445-69-R: Retail and Food Employees Local Union 175, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. The Great Atlantic and Pacific Tea Company, Limited (Respondent).

Unit: "all employees of the respondent at its retail stores at Fort Erie, regularly employed for not more than 24 hours per week and students employed in off school hours and during the school vacation period." (12 employees in the unit).

(having regard to the agreement of the parties).

17446-69-R: United Steelworkers of America (Applicant) v. Bellows-Valvair Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period." (19 employees in the unit).

17452-69-R: International Union of Operating Engineers, Local 793 (Applicant) v. Ball Brothers Limited (Respondent).

Unit: "all employees of the respondent in the Counties of Lennox and Addington, Frontenac and the Townships of Rear of Leeds and Lansdowne, Front of Leeds and Landsdowne, Rear of Yonge and Escott, Front of Yonge and Front of Escott in the County of Leeds, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

17454-69-R: Labourers International Union of North America Local 1081 (Applicant) v. Buildings Division of Dominion Bridge Company Limited (Respondent).

Unit: "all construction labourers in the employ of the Buildings Division of the respondent in the County of Waterloo, save and except non-working foremen and persons above the rank of non-working foreman." (13 employees in the unit).

17455-69-R: International Union of Operating Engineers, Local 796 (Applicant) v. The Kendall Company (Canada) Limited (Respondent).

Unit: "all stationary engineers and persons primarily engaged as their helpers in the boiler room of the respondent at its plant in Metropolitan Toronto, save and except the chief engineer." (3 employees in the unit).

17456-69-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Walker's, Division of Gordon MacKay and Company Limited (Respondent).

Unit: "all employees of the respondent regularly employed for not more than 24 hours per week and students employed during the school vacation period at its retail stores at Sault Ste. Marie, save and except section managers and supervisors, persons above the rank of section manager and supervisor, office staff and persons covered by subsisting collective agreements." (17 employees in the unit).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17498-69-R: Local Union #1940, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Buildings Division of Dominion Bridge Company Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE BUILDINGS DIVISION OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

17517-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. AKRON CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (10 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

17320-69-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICA v. SHELL CANADA LIMITED (RESPONDENT) v. SHELL EMPLOYEES' ASSOCIATION (SARN REFINERY) (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SARNIA REFINERY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PLANT PROTECTION DEPARTMENT EMPLOYEES AND LABORATORY EMPLOYEES (OTHER THAN LABOR TORY TECHNICIANS)." (185 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		180
NUMBER OF PERSONS WHO CAST BALLOTS		179
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	100	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	79	

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

16304-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. J. McLE AND SONS LIMITED (RESPONDENT) v. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 508 (INTERVENER #1) v. LOCAL UNION NO. 1687 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (INTERVENER #2) v. LABOURE INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 (INTERVENER #3) v. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 504 (INTERVENER #4)

UNIT: "ALL PLUMBER, STEAMFITTER, PIPE WELDER, PIPE FITTER, GAS FITTER JOURNEYMEN AND APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN SAULT STE. MARIE AND ITS OUTLYING AREAS TO A POINT 5 MILES EAST OF BLIND RIVER, NORTH TO THE 49TH PARALLEL AND WEST TO MARATHON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	9
NUMBER OF PERSONS WHO CAST BALLOTS	9
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #1, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 508	4

16305-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. ALEX'S PLUMBING AND HEATING LIMITED (RESPONDENT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1036 (INTERVENER #1) v. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 508 (INTERVENER #2).

UNIT: "ALL PLUMBER, STEAMFITTER, PIPE WELDER, PIPE FITTER, GAS FITTER, JOURNEYMEN AND APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN SAULT STE. MARIE AND ITS OUTLYING AREAS TO A POINT 5 MILES EAST OF BLIND RIVER, NORTH TO THE 49TH PARALLEL AND WEST TO MARATHON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #2, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 508	1

16960-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) v. CUSTOM GLASS LTD. (RESPONDENT) v. UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NEWCASTLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (32 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		20
NUMBER OF PERSONS WHO CAST BALLOTS	20	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	16	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	3	

(APPLICANT CERTIFIED)

(APPLICATION FOR INTERVENER DISMISSED).

17284-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. H. TEEUWSEN CONSTRUCTION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		6
NUMBER OF PERSONS WHO CAST BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING MARCH

NO VOTE CONDUCTED

17071-69-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) v. THE BOARD OF GOVERNORS, CARLETON UNIVERSITY (RESPONDENT) v. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 910 (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS (93 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1436).

17225-69-R: SCARBOROUGH GENERAL HOSPITAL REGISTERED NURSING ASSISTANTS BARGAINING ASSOCIATION (APPLICANT) v. SCARBOROUGH GENERAL HOSPITAL (RESPONDENT). (588 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1447).

17238-69-R: Shopmen's Local Union No. 757 of the International Association of Bridge, Structural and Ornamental Iron Workers (A.F.L., C.I.O., C.L.C.) (Applicant) v. Knud Simonsen Industries Limited (Respondent) v. Group of Employees (Objectors). (19 employees).

17287-69-R: International Union of Operating Engineers, Local 793 (Applicant) v. Mal Nicholson Limited (Respondent). (1 employee).

(SEE INDEXED ENDORSEMENT PAGE 1448).

17310-69-R: Canadian Union of Construction Workers (Applicant) v. Tilerite Limited (Respondent). (6 employees).

17398-69-R: Labourers International Union of North America Local 837 (Applicant) v. W. A. McDougall Limited (Respondent). (14 employees).

17408-69-R: General Truck Drivers' Union Local 938 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. H'WK Forwarding Limited (Respondent). (31 employees).

(SEE INDEXED ENDORSEMENT PAGE 1450).

17420-69-R: Teamsters' Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers (Applicant) v. Pioneer Construction Co. (1967) Limited (Respondent) v. Northern Construction Union (Intervener). (17 employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

17122-69-R: United Steelworkers of America, C.I.O. (Applicant) v. Atlas Steels Company A Division of Rio Algom Mines Limited (Respondent) v. The Canadian Steelworkers Union, Atlas Division (Intervener #1) v. The Canadian Union of Operating Engineers, Local 103 (Intervener #2).

Voting Constituency: "all employees of the respondent employed in and about the Company's manufacturing plant located at Welland, Ontario, Canada, but excluding all salaried employees, Section Leaders, Maintenance Supervisors, Melters, and Assistant Rollers and Rollers of the Blooming and Bar Mills or any employee acting full-time in a supervisory or confidential capacity whether on salary or hourly pay, Watchmen and members of the Plant Police Force and Fire Department." (1904 employees).

Number of names of persons on revised voters' list		1811
Number of persons who cast ballots	1785	
Number of spoiled ballots	6	
Number of ballots marked in favour of applicant	426	
Number of ballots marked in favour of intervener #1, The Canadian Steelworkers Union, Atlas Division	1353	

Application for intervener #2 dismissed).

17143-69-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, CLC (APPLICANT) v. CANADIAN DRESSED MEATS LIMITED (RESPONDENT) v. CANADIAN DRESSED MEATS EMPLOYEES' ASSOCIATION (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (80 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		78
NUMBER OF PERSONS WHO CAST BALLOTS	78	
NUMBER OF SPOILED BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	37	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	38	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

16060-69-R: LOCAL 204 SERVICE EMPLOYEES' INTERNATIONAL UNION AFFILIATED WITH THE AFL. CIO. CLC. (APPLICANT) v. VICTORIA UNIVERSITY (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS TORONTO CAMPUS IN THE MAINTENANCE AND SERVICE OF BUILDINGS AND GROUNDS AND IN THE PROVISION OF FOOD SERVICES, SAVE AND EXCEPT FOREMAN AND SUPERVISORS AND PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE UNIVERSITY VACATION PERIOD." (111 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		102
NUMBER OF PERSONS WHO CAST BALLOTS	101	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	38	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	61	

16846-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE BOARD O HEALTH OF NIAGARA DISTRICT HEALTH UNIT (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT REGISTERED NURSES, ASSISTANT CHIEF PUBLIC HEALTH INSPECTOR AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF PUBLIC HEALTH INSPECTOR." (44 EMPLOYEES IN THE UNIT).

Number of names of persons on revised voters' list		44
Number of persons who cast ballots	44	
Number of ballots marked in favour of applicant	16	
Number of ballots marked against applicant	28	

16874-69-R: International Chemical Workers Union (Applicant) v. Shakespeare Company (Canada) Ltd. (Respondent).

Unit: "all employees of the respondent at Orillia, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period." (17 employees in the unit).

Number of names of persons on revised voters' list		17
Number of persons who cast ballots	17	
Ballots segregated and not counted	1	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	9	

17153-69-R: International Union of District 50, U.M.W.A. (Applicant) v. Roberts Company Canada Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in the Township of Chinguacousy, save and except foremen, persons above the rank of foreman, persons regularly employed for not more than 24 hours per week, office and sales staff and students employed during the school vacation period." (28 employees in the unit).

Number of names of persons on revised voters' list		21
Number of persons who cast ballots	20	
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	17	

17206-69-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Copper Cliff Dairy Limited (Respondent) v. Group of Employees (Objectors).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT COPPER CLIFF, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARL EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		17
NUMBER OF PERSONS WHO CAST BALLOTS	17	
NUMBER OF SEGREGATED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	11	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MARCH

17417-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MARKER BUILDING MATERIALS CATARAQUI LTD. (RESPONDENT). (17 EMPLOYEES).

17448-69-R: A. O. BOLYEA, SECRETARY-TREASURER THE PUBLIC SERVICE ALLIANCE EMPLOYEES UNION (APPLICANT) V. MR. C. A. EDWARDS, PRESIDENT THE PUBLIC SERVICE ALLIANCE OF CANADA (RESPONDENT). (24 EMPLOYEES).

17489-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. LAKESHORE DIE CASTING LIMITED (RESPONDENT) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER). (95 EMPLOYEES).

17495-69-R: INTERNATIONAL UNION OF INDUSTRIAL WORKERS, DIVISION 1 (APPLICANT) V. MODULCON LIMITED (RESPONDENT). (57 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING MARCH

15422-68-R: RICHARD TIFFIN, MARY MASON, RONALD MCLEAN, MANUEL CAVACAS, REGINA VROMAN, AND TOM SCHINKELSHOEK, AND OTHERS (APPLICANTS) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (RESPONDENT) V. NORTH AMERICAN PLASTICS CO. LTD. (DISMISSED). (INTERVENER).

(SEE INDEXED ENDORSEMENT PAGE 1451).

17044-69-R: THOMAS FEENEY AND PETER RENNIE (APPLICANTS) V. SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 204 (RESPONDENT). (GRANTED).
RE: METROPOLITAN SEPARATE SCHOOL BOARD.

UNIT: "ALL CARETAKERS, MATRONS AND GENERAL MAINTENANCE STAFF AT ELEMENTARY AND SECONDARY SCHOOLS OF METROPOLITAN SEPARATE SCHOOL BOARD AT METROPOLITAN TORONTO." (375 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		386
NUMBER OF PERSONS WHO CAST BALLOTS	377	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	36	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	327	
BALLOTS SEGREGATED AND NOT COUNTED	11	

17232-69-R: CECIL CROCCO (APPLICANT) v. AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (RESPONDENT). (20 EMPLOYEES). (DISMISSED).

(RE: ALPINE MEAT PRODUCTS LIMITED).

17348-69-R: SELBY YOUNG PRINTING COMPANY LIMITED (APPLICANT) v. LONDON COMMERCIAL AND PAPER BOX WORKERS' UNION NO. 510 (RESPONDENT) (GRANTED).

(RE: SELBY YOUNGE PRINTING COMPANY LIMITED).

17384-69-R: CANADIAN LANDIS MACHINE COMPANY, LTD. (APPLICANT) v. UNITED STEELWORKERS OF AMERICA (RESPONDENT). (5 EMPLOYEES). (DISMISSED).

(RE: CANADIAN LANDIS MACHINE COMPANY, LTD.).

17387-69-R: GEORGE F. WAYLAND (APPLICANT) v. THE OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 131 (RESPONDENT) v. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (INTERVENER). (250 EMPLOYEES). (DISMISSED).

(RE: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO).

17399-69-R: CANADIAN SILK MANUFACTURING CO. LTD. (APPLICANT) v. GENERAL TRUCK DRIVERS' UNION, LOCAL 938 OF TORONTO, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (9 EMPLOYEES) (GRANTED).

(RE: CANADIAN SILK MANUFACTURING CO. LTD., NORTH BAY).

(SEE INDEXED ENDORSEMENT PAGE 1458).

17410-69-R: GREGORY LYLE HINAN (APPLICANT) v. THE TORONTO NEWSPAPER GUILD (LOCAL 87), CHARTERED BY THE AMERICAN NEWSPAPER GUILD (CLC, AFL-CIO) (RESPONDENT). (12 EMPLOYEES). (DISMISSED).

(RE: THE BURLINGTON PRINTING COMPANY).

17482-69-R: Group of Employees (Applicant) v. Sheet Metal Workers International Association Local Union 537, Hamilton, Ontario Branch (Respondent). (6 employees). (DISMISSED).

(Re: Boonstra-Reiding Sheetmetal Ltd.).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING MARCH

17394-69-R: International Association of Machinists and Aerospace Workers (Applicant) v. Canadian Longyear Limited (Respondent) v. Mine and Exploration Equipment Workers Union (Predecessor Trade Union). (GRANTED).

17524-69-R: Civic Employees' Local Union No. 181, Canadian Union of Public Employees (Applicant) v. The Corporation of the City of Brantford and The Board of Park Management and Recreation Commission of the City of Brantford (Respondents). (WITHDRAWN).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING MARCH

17469-69-U: Belmont Plastering Company Limited (Applicant) v. Operative Plasterers' and Cement Masons' International Association of the United States and Canada Local 117 (Respondent). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1459).

17504-69-U: East Side Plating (Canada) Limited Windsor Bumper Company Limited, and East Side Stamping Company Limited (Applicants) v. International Union, United Automobile Aerospace and Agricultural Implement Workers of America - Local 195 and The International Union, United Automobile Aerospace and Agricultural Implement Workers of America (Respondents). (WITHDRAWN).

17508-69-U: East Side Plating (Canada) Limited, Windsor Bumper Company Limited, and East Side Stamping Company Limited (Applicants) v. Newton Gordon and Others as set forth in Schedule "A" hereto attached (Respondents). (WITHDRAWN).

APPLICATION FOR DECLARATION THAT LOCK-OUT UNLAWFUL DISPOSED OF DURING MARCH

17476-69-U: General Truck Drivers' Union, Local 938 (Applicant) v. Toronto Cartage Company (Respondent). (DISMISSED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MARCH

17116-69-U: Labourers' International Union of North America, Local 527 (Applicant) v. P. Ouimet & Sons Construction Ltd. (Respondent). (WITHDRAWN).

17117-69-U: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Marsland Engineering Limited L. H. Marsland G. M. Cox W. Marsland Stanley Bowman (Respondents). (GRANTED).

17327-69-U: General Truck Drivers' Union Local 938 (Applicant) v. Wilson's Truck Lines Limited (Respondent). (GRANTED).

17403-69-U: Textile Workers Union of America, CLC, AFL-CIO (Applicant) v. Van Raalte of Canada Limited, Lottie Roth and Leslie Kelly (Respondent). (WITHDRAWN).

17415-69-U: Canadian Union of Public Employees and its Local 152 (Applicant) v. Wilson Coach Lines Limited (Respondent). (WITHDRAWN).

17416-69-U: Canadian Union of Public Employees and its Local 152 (Applicant) v. Lincoln County Board of Education (Respondent). (WITHDRAWN).

17431-69-U: Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union 91 (Applicant) v. De Haan Cartage Company Limited (Respondent). (GRANTED).

17461-69-U: Mutuel Employees' Association Local 528, B.S.E.I.U. (Applicant) v. The Jockey Club Limited (Respondent). (WITHDRAWN).

17465-69-U: Canadian Union of Public Employees (Applicant) v. The Hospital for Sick Children (Respondent). (WITHDRAWN).

17466-69-U: Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union 91 (Applicant) v. De Haan Cartage Company Limited (Respondent). (WITHDRAWN).

17485-69-U: Mutuel Employees' Association Local 528, B.S.E.I.U. (Applicant) v. The Jockey Club Limited and affiliated racing association (Respondent). (WITHDRAWN).

17486-69-U: Mutuel Employees' Association, Local 528, B.S.E.I. U. (Applicant) v. K. R. MacKenzie and John J. Mooney (Respondent). (WITHDRAWN).

17505-69-U: East Side Plating (Canada) Limited, Windsor Bumper Company Limited, and East Side Stamping Company Limited (Applicants) v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America - Local 195 and others as set forth in Schedule "A" hereto attached (Respondents). (WITHDRAWN).

17116-69-U: Labourers' International Union of North America, Local 527 (Applicant) v. P. Ouimet & Sons Construction Ltd. (Respondent). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

MARCH

17010-69-U: United Electrical, Radio and Machine Workers of America (U (Complainant) v. O. & W. Electronics Limited (Respondent). (DISMISSED)

(SEE INDEXED ENDORSEMENT PAGE 1463).

17087-69-U: Canadian Brotherhood of Railway, Transport and General Wor (Complainant) v. Cyrville Chrysler Dodge Limited (Respondent). (DISMIS

(SEE INDEXED ENDORSEMENT PAGE 1466).

17167-69-U: International Woodworkers of America (Complainant) v. L. E Welk Lumber Manufacturing Limited (Respondent). (WITHDRAWN).

17239-69-U: Boot and Shoe Workers' Union affiliated with Canadian Labo Congress, and AFL-CIO. (Complainant) Doreen Shoe Company Ltd. (Respondent (DISMISSED).

17243-69-U: Textile Workers Union of America (Complainant) v. Bell The Company Limited (Respondent). (WITHDRAWN).

- and -

17273-69-U: Textile Workers Union of America (Complainant) v. Bell The Company Limited (Respondent). (WITHDRAWN).

17279-69-U: The Canadian Union of Public Employees (Complainant) v. T Corporation of the Town of Carleton Place (Respondent). (WITHDRAWN).

17334-69-U: International Chemical Workers Union (Complainant) v. Shakespeare Company (Canada) Ltd. (Respondent). (WITHDRAWN).

17356-69-U: The International Union United Automobile, Aerospace, Agricultural Implement Workers of America (UAW) and Local 636 (Complainant) v. Fisher Governor Company of Canada Limited (Respondent). (WITHDRAWN).

17366-69-U: United Steelworkers of America (Complainant) v. Keystone Generator Starter Rebuilders Limited (Respondent). (WITHDRAWN).

17390-69-U: United Steelworkers of America (Complainant) v. Lynkar Watch Company Limited (Respondent). (WITHDRAWN).

17450-69-U: Canadian Union of Public Employees and its Local 152 (Complainant) v. Wilson Coach Lines Limited (Respondent). (WITHDRAWN).

17460-69-U: Mutuel Employees' Association Local 528, B.S.E.I.U. (Complainant) v. Jockey Club Limited and Affiliated Racing Associations (Respondent). (WITHDRAWN).

17464-69-U: Canadian Union of Public Employees (Complainant) v. The Hospital for Sick Children (Respondent). (WITHDRAWN).

17484-69-U: Mutuel Employees' Association Local 528, B.S.E.I.U. (Complainant) v. The Jockey Club Limited and affiliated racing associations (Respondent). (WITHDRAWN).

APPLICATION UNDER SECTION 33(2) DISPOSED OF DURING MARCH

17462-69-M: Livingston Industries Limited (Applicant) v. International Woodworkers of America (Respondent). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1468).

APPLICATION UNDER SECTION 47a DISPOSED OF DURING MARCH

17046-69-M: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647, (Applicant) v. The Borden Company Limited, Silverwood Dairies Limited, Retail Wholesale and Department Store Union, Local 440, A.F.L., C.I.O., C.L.C. (Respondents). (GRANTED).

Unit: "all employees of the respondent, Silverwood Dairies Limited, employed at or working out of its branch in the City of Brantford, save and except foremen, route foremen, persons above the rank of foreman or route foreman, office staff, sales supervisors, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period."

Number of names of persons on revised voters' list		31
Number of persons who cast ballots	31	
Number of ballots marked in favour of applicant	11	
Number of ballots marked in favour of respondent, Retail Wholesale and Department Store Union, Local 440, A.F.L., C.I.O., C.L.C.,	20	

JURISDICTIONAL DISPUTE

17280(A)-69-JD: Stewart & Hinan Construction Limited (Complainant) v. United Brotherhood of Carpenters & Joiners of America, Local Union #38, and International Association of Bridge Structural and Ornamental Iron Workers Local 796(Respondents) v. Bricklayers, Masons and Plasterers International Union of America, Local 4 (Intervener #1) v. Laborer's International Union of North America, Local 837 (Intervener #2). (WITHDRAWN).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING MARCH

17278-69-M: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Volkswagen Canada Limited (Respondent). (DISMISSED).

17395-69-M: The London & District Building Service Workers' Union, Local 220, S.E.I.U. (Applicant) v. The Centre Grey General Hospital, Markdale (Respondent).

(SEE INDEXED ENDORSEMENT PAGE 1470).

17433-69-M: The Corporation of the City of Brantford (Applicant) v. Brantford Municipal Employees Union, Local 375, Chartered by the Canadian Union of Public Employees, CLC (Respondent). (WITHDRAWN).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

16988-69-R: International Union of District 50, U.M.W.A. (Applicant) v. Red Rooster Sportswear Limited (Respondent) v. Local 974, Amalgamated Clothing Workers of America (CLC-AFL-CIO) (Intervener). (REQUEST DENIED).

17225-69-R: Scarborough General Hospital Registered Nursing Assistants Bargaining Association (Applicant) v. Scarborough General Hospital (Respondent). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1471).

17227-69-R: Draftsmen's Association of Ontario, Local 164, American Federation of Technical Engineers, A.F.L.-C.I.O., C.L.C. (Applicant) v. John T. Hepburn, Limited (Respondent).

(SEE INDEXED ENDORSEMENT PAGE 1472).

17401-69-R: United Brotherhood of Carpenters & Joiners of America Local Union #249 (Applicant) v. Fleming Installations Ltd. (Respondent). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD''s DECISION - TERMINATION

17194-69-R: Andre Construction Company, 474 West Street North, P.O. Box 566, ORILLIA, Ontario (Applicant) v. The Central Ontario District Council United Brotherhood of Carpenters and Joiners of America (Respondent). (REQUEST DENIED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 65

16443-69-U: J. P. Sullivan (Complainant) v. Duplate Canada Ltd. (Respondent). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1472).

16900-69-U: The Canadian Union of Public Employees (Complainant) v. Refrew County Roman Catholic Separate School Board (Respondent). (REQUEST DENIED).

INDEXED ENDORSEMENTS - CERTIFICATION

16625-69-R: International Union of District 50, U.M.W.A. (Applicant) v. GORD-BLANCHE LTD. CARRYING ON BUSINESS UNDER THE CORRECT NAME OF HICKS LUMBER & WOOD PRODUCTS CO. (Respondent).

BEFORE: O. B. Shime, Vice-Chairman and Board Members E. Boyer and R. W. Teagle.

APPEARANCES AT THE HEARING: William Fuller for the applicant; J. B. Noonan for the respondent.

DECISION OF O. B. SHIME, VICE-CHAIRMAN, BOARD MEMBER
E. BOYER DISSENTING IN PART: MARCH 9, 1970.

1. THE BOARD IN THIS CASE ISSUED A DECISION DATED FEBRUARY 4, 1970, IN WHICH IT INDICATED THAT BECAUSE OF THE CONTRADICTORY NATURE OF THE EVIDENCE CONCERNING THE EMPLOYMENT STATUS OF GEORGE REECE WHICH WAS CONTAINED IN THE INTERIM REPORT OF THE EXAMINER, IT WAS PREFERABLE THAT VIVA VOCE EVIDENCE BE ADDUCED BY THE PARTIES ON THIS ISSUE. ACCORDINGLY A HEARING WAS HELD ON FEBRUARY 26, 1970 FOR THAT PURPOSE. AT THE HEARING, EVIDENCE WAS ADDUCED BY THE RESPONDENT COMPANY RESPECTING THE EMPLOYMENT STATUS OF GEORGE REECE WHICH INDICATED THAT MR. REECE HAD QUIT PRIOR TO THE DATE OF THE APPLICATION. THE UNION DID NOT SEE FIT TO ADDUCE ANY EVIDENCE AT THE HEARING.

2. HAVING REGARD TO THE DECISION OF THE BOARD DATED FEBRUARY 4, 1970, AND TO THE FACT THAT THE VIVA VOCE TESTIMONY OF THE COMPANY IS UNCONTRADICTED, WE ACCEPT THE TESTIMONY OF THE COMPANY AND FIND THAT GEORGE REECE WAS NOT EMPLOYED ON THE DATE OF THE MAKING OF THE APPLICATION AND, ACCORDINGLY, HE IS NOT INCLUDED ON THE LIST OF EMPLOYEES FOR THE PURPOSE OF MAKING ANY DETERMINATION PURSUANT TO SECTION 7 OF THE LABOUR RELATIONS ACT.

3. AT A PREVIOUS HEARING ON DECEMBER 17, 1969, THE BOARD HAD HEARD EVIDENCE CONCERNING LACK OF PAYMENT BY MR. ALFRED THERIEN OF HIS MEMBERSHIP DUES IN THE APPLICANT. MR. THERIEN HAD PREVIOUSLY ADVISED THE BOARD'S EXAMINER THAT NO ONE WAS PRESENT WHEN HE SIGNED HIS MEMBERSHIP CARD AND MADE PAYMENT. HOWEVER, BEFORE THE BOARD HE TESTIFIED THAT THERE WERE FIVE OR SIX PERSONS WHO WERE PRESENT AT THE TIME OF THE SIGNING OF THE MEMBERSHIP CARD. ACCORDINGLY, THE BOARD, HAVING OBTAINED KNOWLEDGE THAT THERE WERE OTHER PERSONS AWARE OF THE CIRCUMSTANCES OF THE SIGNING OF THE MEMBERSHIP CARD, DETERMINED THAT THOSE PERSONS SHOULD GIVE EVIDENCE AT THE HEARING ON FEBRUARY 26, 1970.

4. AT THE ORIGINAL HEARING THE EVIDENCE ADDUCED INDICATED THAT MR. THERIEN HAD GONE TO A HOTEL TO HAVE SOME BEER. AT THE HOTEL HE SAW SOME FELLOW EMPLOYEES WHO DISCUSSED JOINING THE UNION WITH HIM. HE STATED AT THE TIME THAT HE DID NOT HAVE ANY MONEY BECAUSE HE HAD JUST COME OUT OF HOSPITAL. MR. THERIEN THEN STATED HE WAS TOLD THAT HE HAD LOTS OF TIME TO PAY AND HE DID NOT MAKE ANY PAYMENT BUT SIGNED AN APPLICATION FOR MEMBERSHIP IN THE UNION. MR. ROSSEAU, WHO IS AN EMPLOYEE OF THE COMPANY AND THE COLLECTOR, TESTIFIES THAT WHEN MR. THERIEN STATED HE DID NOT HAVE ANY MONEY AS A RESULT OF BEING HOSPITALIZED, MR. ROSSEAU SAID "I OWE YOU THREE DOLLARS AND I WILL CONTRIBUTE THE THREE DOLLARS I OWE YOU", AND THE OTHER EMPLOYEES "CHIPPED IN" THE REMAINING TWO DOLLARS AND ACCORDINGLY, THE FIVE DOLLARS FOR MEMBERSHIP WAS COLLECTED.

5. Mr. Therien was recalled to the witness stand and testified that Mr. Rosseau did not owe him any money and stated that other employees had made a payment on his behalf. Accordingly there was a direct conflict in the testimony.

6. Lucien Desgagne testified, as did Mr. Rosseau that other employees had "chipped in" for the membership fee and further indicated that there had been some discussion about a loan. Mr. John Dostie, who was also present, indicated that there was some conversation about the owing of money between Mr. Rosseau and Mr. Therien.

7. We are of the opinion that the evidence given by Mr. Desgagne and Mr. Dostie corroborates the evidence given by Mr. Rosseau. If there had been no money owing as Mr. Therien contends, there would have been no reason to have any conversation whatsoever about a loan. Having regard to the conversation about the loan, the corroboration of Mr. Rosseau's evidence, and the fact that Mr. Therien when he gave evidence before the examiner, indicated that there were no other employees present, we prefer to accept Mr. Rosseau's version of the facts surrounding the membership evidence.

8. Even if we were to assume that the method of payment of membership fees is a relevant consideration before this Board in the light of the decision of the Supreme Court of Canada in the Metropolitan Life Insurance Company case, we conclude that there has been no impropriety in the membership evidence concerning Mr. Therien.

. . .

10. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER E. BOYER: March 9, 1970.

I concur with the decision of the Vice-Chairman in all other respects. I dissent from that part of the decision that finds that George Reece is not an employee. Having regard to the examiner's report I would have found George Reece is an employee for the purpose of making a determination pursuant to section 7 of The Labour Relations Act.

DISSENT OF BOARD MEMBER R. W. TEAGLE: March 9, 1970.

I concur with the decision of the Vice-Chairman that George Reece is not an employee. However, I dissent from that portion of the decision concerning the membership evidence of Alfred Therien. I find that Mr. Therien did not make any payment of membership fees and, even

ASSUMING THAT HE DID, HE MADE NO FINANCIAL SACRIFICE ON HIS OWN BEHALF AND ACCORDINGLY, I WOULD HAVE DISALLOWED HIS MEMBERSHIP CARD AND ORDERED A VOTE IN THE CIRCUMSTANCES OF THIS CASE.

16804-69-R: LOCAL UNION 1739 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. ED WALKER'S ELECTRIC LTD. (RESPONDENT) V. EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: L. WARNER AND B. BARNES FOR THE APPLICANT, W. S. COOK AND J. G. WALKER FOR THE RESPONDENT, A. SMITTEN FOR THE OBJECTORS.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER E. BOYER: MARCH 26, 1970.

. . .

3. THE BOARD FURTHER FINDS THAT ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD HAS CONSIDERED THE REPORT OF THE EXAMINER DATED FEBRUARY 17, 1970 AND THE WRITTEN REPRESENTATIONS OF THE APPLICANT AND THE RESPONDENT WITH RESPECT TO THE REPORT. THE REPORT DEALS WITH THE EMPLOYMENT STATUS AND DUTIES AND RESPONSIBILITIES OF DAVID WALKER AND ALLAN WALKER. ACCORDING TO THE EVIDENCE, THEY ARE BOTH SONS OF EDWIN WALKER, THE PRESIDENT OF THE RESPONDENT, AND ARE BROTHERS OF GORDON WALKER, THE GENERAL MANAGER OF THE RESPONDENT. ACCORDING TO GORDON WALKER, THE SHARE STRUCTURE OF THE RESPONDENT CONSISTS OF COMMON AND PREFERRED SHARES AND THE FAMILY OWNS 100 PER CENT OF THE COMMON SHARES AND 10 PER CENT OF THE PREFERRED SHARES. BOTH DAVID AND ALLAN WALKER ARE SHAREHOLDERS AND DIRECTORS OF THE RESPONDENT COMPANY AND WOULD SHARE IN THE PROFITS OF THE COMPANY, ASSUMING THERE WERE SOME. MOREOVER, THEY BOTH ATTEND APPROXIMATELY SIX DIRECTORS' MEETINGS PER YEAR WHICH ARE CALLED BY THE GENERAL MANAGER AND ARE ATTENDED BY THE FATHER AND THE FOUR SONS. AT THESE MEETINGS, SUCH SUBJECTS AS CAPITAL EXPENDITURES, YEARLY AUDIT, LABOUR RELATIONS, FORECASTS, ETC. ARE DEALT WITH. ON THE BASIS OF THE ABOVE EVIDENCE ALONE, NOTWITHSTANDING THE NATURE OF THE WORK WHICH THEY PERFORM, WE FIND THAT DAVID WALKER AND ALLAN WALKER EXERCISE MANAGERIAL FUNCTIONS AND ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

5. The revised list of employees of the respondent in the bargaining unit as of the date of the making of the application contains the names of ten employees. The applicant has filed evidence of membership for six of the persons on the respondent's list. There was also filed with the Board a statement of desire expressing opposition to the application. If the Board were to give weight to the document, the applicant would have qualified evidence of membership for less than fifty-five per cent of the employees in the bargaining unit which would entitle the applicant to outright certification. Having regard to the evidence as to the origination, preparation and circulation of the statement of desire, we are satisfied that it represents a voluntary expression of the true wishes of the employees who signed it. We accordingly find that the statement of desire sufficiently weakens the evidence of membership filed by the applicant so as to cause the Board to seek the confirmatory evidence of a representation vote.

6. The Board is satisfied on the basis of all the evidence before it that not less than forty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on October 8, 1969, the terminal date fixed for this application and the date which the Board determines, under section 77(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

7. A representation vote will be taken of the employees of the respondent in the bargaining unit. All employees of the respondent in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

8. Voters will be asked to indicate whether or not they wish to bargain collectively through the applicant.

9. The matter is referred to the Registrar.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: March 26, 1970.

I dissent. Having regard to the indicia usually considered by the Board in determining whether persons exercise managerial authority within the meaning of section 1(3)(b) of The Labour Relations Act, I would find that David Walker and Allan Walker do not exercise such authority, and would have included them in the bargaining unit.

In the Examiner's Report there is a reference by the Examiner to the fact that they attend meetings dealing with a number of matters including "labour relations". In that regard, I would have had the Examiner re-attend to investigate and expand on what was meant by such reference.

ONLY THEN, WOULD I MAKE A DETERMINATION WITH RESPECT TO WHETHER THEY SHOULD BE EXCLUDED BECAUSE THEY WERE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT.

17071-69-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. THE BOARD OF GOVERNORS, CARLETON UNIVERSITY (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 910 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O. B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: S.L. ROBINS, Q.C., G.O. JONES AND BEN COFFEY FOR THE APPLICANT; L.M. JOYAL, Q.C., A.B. LAROSE AND ELMO GILCHRIST FOR THE RESPONDENT; J. SACK FOR THE INTERVENER; J.B. WATERMAN FOR THE OBJECTORS.

DECISION OF THE BOARD: MARCH 11, 1970.

1. THE APPLICANT IS A COMPANY DULY INCORPORATED UNDER PART III OF THE CORPORATIONS ACT, R.S.O. 1960, C. 171, AND AMENDMENTS THERETO. THE OBJECTS OF THE APPLICANT ARE SET OUT IN ITS SUPPLEMENTARY LETTERS PATENT DATED APRIL 26, 1962, WHICH HAVE BEEN FILED. THEY ARE AS FOLLOWS:

(A) TO IMPROVE THE EFFICIENCY OF THE SERVICE AND TO PROMOTE THE COMMON INTERESTS OF THE MEMBERS OF THE CORPORATION;

(B) TO REPRESENT THE MEMBERS OF THE CORPORATION AS EMPLOYEES OF THE GOVERNMENT OF THE PROVINCE OF ONTARIO OR A BOARD, COMMISSION OR OTHER EMANATION OF THE CROWN IN THE RIGHT OF ONTARIO OR AS A PUBLIC SERVANT WITHIN THE PROVISIONS OF THE PUBLIC SERVICE ACT (ONTARIO) IN MATTERS GOVERNING APPOINTMENT, PROMOTION, REMUNERATION, VACATION, HOURS OF WORK, SUPERANNUATION, TRANSFER, DISCIPLINE, INCLUDING SUSPENSION, DEMOTION AND DISMISSAL, AND IN MATTERS RELEVANT TO CONDITIONS OF WORK; AND

(C) TO ENTER INTO ANY ARRANGEMENTS WITH ANY AUTHORITIES, GOVERNMENTAL, MUNICIPAL, LOCAL OR OTHERWISE, THAT MAY SEEM CONDUCIVE TO THE CORPORATION'S RIGHTS, PRIVILEGES AND CONCESSIONS WHICH THE CORPORATION MAY THINK DESIRABLE TO OBTAIN AND TO CARRY OUT, EXERCISE AND COMPLY WITH ANY SUCH ARRANGEMENTS, RIGHTS, PRIVILEGES AND CONCESSIONS.

2. The respondent was originally incorporated in 1943 by Letters Patent pursuent to the Companies Act and subsequently by the Carleton College Act, 1952, c. 117 and amendments thereto, its powers and privileges were enlarged and increased and its name changed. The respondent is a university with all the attendant functions usual to a university.

3. The respondent and the objectors alleged that because the objects of the application do not authorize it to take into membership employees of the respondent, and that the applicant is unable to represent the employees of the respondent and on that basis they request that the application be dismissed. They rely primarily on the decision of this Board in the Civil Service Association of Ontario (Inc.) v. Versafood Services Limited Institutions Division University of Guelph, January 1968, O.L.R.B., M.R. p. 988.

4. The applicant contends that because it is incorporated under The Corporations Act it has all the powers of a natural person unless expressly prohibited, and pursuant to its general powers has enacted by-laws which permit it to take into membership those persons who are employees of the respondent. The judgment of the Ontario Court of Appeal in Walton v. Bank of Nova Scotia, 1964, 1. O.R. 673 outlines the basis and history for the respondent's position concerning its power. Schroeder, J.A. speaking for the Court, stated at p. 680:

> An authority fundamentally relevant to the question whether an act of a company incorporated under the Corporations Act of the Province of Ontario is ultra vires is Bonanza Creek Gold Mining Co. v. The King, 26 D.L.R. 273, (1916) 1 A.C. 566, 10 W.W.R. 391, 25 Que. K.B. 170. The facts of that case are quite simple. A company incorporated in Ontario under the Companies Act of the Province started to carry on business in the Yukon and, for the purpose of enabling it to do so, obtained a license from the Department of the Interior. A dispute arose out of the cancellation of some of its leases, and the company commenced an action against the Crown for the recovery of damages. The case reached the Privy Council where it was argued on behalf of the Crown that the Ontario company could not enter into or was incapable of entering into a contract outside the territorial limits of the Province which created it, and for that reason there was no damage and no breach of contract.

THE DECISION OF THE PRIVY COUNCIL WAS NOT ONLY SWEEPING BUT, AT THE TIME, STARTLING TO CANADIAN LAWYERS. THE BOARD WAS NOT CONCERNED WITH LIMITATIONS OF THE CAPACITY OF A PROVINCIAL COMPANY IN SO FAR AS ITS PURPOSES AND OBJECTS WERE CONCERNED; ITS PURPOSE WAS TO DECIDE WHETHER A PROVINCIAL COMPANY COULD CARRY ON BUSINESS OUTSIDE THE INCORPORATING JURISDICTION. IN ORDER TO JUSTIFY ITS DECISION THAT IT COULD, THE PRIVY COUNCIL HELD THAT THE COMPANY WAS A COMMON LAW COMPANY AND HAD CAPACITY TO PURSUE ITS BUSINESS OUTSIDE THE INCORPORATING PROVINCE AND, INFERENTIALLY, THAT IT COULD CARRY ON ANY BUSINESS. AT P. 284 D.L.R., P. 583 A.C., P. 401 W.W.R. IT WAS STATED BY VISCOUNT HALDANE:

> IN THE CASE OF A COMPANY CREATED BY CHARTER, THE DOCTRINE OF ULTRA VIRES HAS NO REAL APPLICATION IN THE ABSENCE OF STATUTORY RESTRICTION ADDED TO WHAT IS WRITTEN IN THE CHARTER. SUCH A COMPANY HAS THE CAPACITY OF A NATURAL PERSON TO ACQUIRE POWERS AND RIGHTS. IF BY THE TERMS OF THE CHARTER IT IS PROHIBITED FROM DOING SO, A VIOLATION OF THIS PROHIBITION IS AN ACT NOT BEYOND ITS CAPACITY, AND IS, THEREFORE, NOT ULTRA VIRES, ALTHOUGH SUCH A VIOLATION MAY WELL GIVE GROUND FOR PROCEEDINGS BY WAY OF SCIRE FACIAS FOR THE FORFEITURE OF THE CHARTER.

WHETHER THE CORRECT DEDUCTION FROM THE OPINION OF VISCOUNT HALDANE IS THAT A PROVINCIAL COMPANY, BEING A COMMON LAW COMPANY, COULD CARRY ON ANY BUSINESS THAT A NATURAL PERSON COULD, OR THAT THE JUDGMENT MUST BE READ AS DECIDING NO MORE THAN THAT A PROVINCIAL COMPANY COULD CARRY ON BUSINESS AND HAD THE CAPACITY TO CARRY ON BUSINESS OUTSIDE OF THE INCORPORATING JURISDICTION AND THAT ANYTHING BEYOND THIS CONCEPT IS PURE DICTUM IS OF VERY LITTLE IMPORTANCE, FOR IMMEDIATELY FOLLOWING THE DECISION OF THE PRIVY COUNCIL THERE WERE ENACTMENTS IN NEARLY ALL THE PROVINCES WHICH SETTLED THE POINT. THE ONTARIO STATUTE WAS AN AMENDMENT TO THE ONTARIO COMPANIES ACT -- 1916, c. 35, s. 6, AMENDING THE COMPANIES ACT BY ADDING s. 210 WHICH PROVIDED THAT A COMPANY CREATED UNDER THE ACT

"SHALL, UNLESS OTHERWISE EXPRESSLY DECLARED IN THE ACT OR INSTRUMENT CREATING IT, HAVE, AND BE DEEMED FROM ITS CREATION TO HAVE HAD, THE GENERAL CAPACITY WHICH THE COMMON LAW ORDINARILY ATTACHES TO CORPORATIONS CREATED BY CHARTER".

THIS SECTION IS NOW S. 287 OF THE CORPORATIONS ACT, R.S.O. 1960, C. 71, WHICH READS:

> 287. A CORPORATION, UNLESS OTHERWISE EXPRESSLY PROVIDED IN THE ACT OR INSTRUMENT CREATING IT, HAS AND SHALL BE DEEMED TO HAVE HAD FROM ITS CREATION THE CAPACITY OF A NATURAL PERSON AND MAY EXERCISE ITS POWERS BEYOND THE BOUNDARIES OF ONTARIO TO THE EXTENT TO WHICH THE LAWS IN FORCE WHERE THE POWERS ARE SOUGHT TO BE EXERCISED PERMIT, AND MAY ACCEPT EXTRA-PROVINCIAL POWERS AND RIGHTS.

IN 1918 THE COURT OF APPEAL OF THIS PROVINCE HAD OCCASION TO CONSIDER THE EFFECT OF THE JUDGMENT IN THE BONANZA CREEK CASE AND OF THE ONTARIO LEGISLATION ENACTED IMMEDIATELY THEREAFTER ADDING S. 210 TO THE COMPANIES ACT. IN EDWARDS V. BLACKMORE (1918, 42 D.L.R. 280, 42 O.L.R. 105, IT WAS HELD THAT BY VIRTUE OF THE PROVISIONS OF THAT SECTION A COMPANY THUS INCORPORATED WAS ENDOWED WITH ALL THE CAPACITY WHICH A CORPORATION CREATED BY CHARTER HAD AT COMMON LAW -- THAT IS, ALMOST UNLIMITED CAPACITY TO CONTRACT; THAT STATEMENTS IN THE LETTERS PATENT DEFINING THE OBJECTS OF INCORPORATION DID NOT TAKE AWAY THAT CAPACITY; AND EVEN EXPRESS RESTRICTIONS IN THE CHARTER DID NOT TAKE IT AWAY, BUT SHOULD BE TREATED AS A DECLARATION OF THE CROWN'S PLEASURE IN REFERENCE TO THE PURPOSE BEYOND WHICH THE CAPACITY OF THE CORPORATION WAS NOT TO BE EXERCISED, A BREACH WHEREOF GAVE THE CROWN A RIGHT TO ANNUL THE CHARTER.

THAT JUDGMENT HAS BEEN FOLLOWED CONSISTENTLY IN ONTARIO EVER SINCE AND WAS APPLIED AND FOLLOWED IN RE JACQUES FURNITURE CO., CAN. RADIO CORPORATION LTD. V. THE TRUSTEE (1933) O.W.N. 170, 14 C.B.R. 316 (C.A.), AND IN ROYAL BANK OF CANADA V. FLEMING (1933) 3. D.L.R. 353, (1933) O.R. 601 (C.A.).

IN RE W. N. MCEACHREN & SONS LTD., MCGIBBON V. IMPERIAL TRUST CO., 1933 2 D.L.R. 558 AT P. 568, 1933 O.R. 349 AT P. 360, 14 C.B.R. 410 AT P. 419, DAVIS J. DAVIS, J.A., STATED:

> IN MY VIEW THE AGREEMENT IN THIS CASE WAS NOT ULTRA VIRES THE COMPANY. IF IT DID NOT COME WITHIN ONE OF THE SPECIFIC OBJECT CLAUSES OF THE LETTERS PATENT, AS I THINK IT DID, IT CAME WITHIN THE GENERAL CORPORATE POWERS CONFERRED BY S. 238 (FORMERLY S. 210) OF THE ACT INCORPORATING IT.

5. WE HAVE CONSIDERED THE NUMEROUS CASES CITED TO US BY COUNSEL, HOWEVER WE ARE OF THE OPINION THAT SECTION 112 OF THE CORPORATIONS ACT IS APPOSITE. THAT SECTION PROVIDES INTER ALIA:

> 112. -- (1) THE DIRECTORS OF A CORPORATION MAY PASS BY-LAWS NOT CONTRARY TO THIS ACT OR TO THE LETTERS PATENT OR SUPPLEMENTARY LETTERS PATENT TO REGULATE,
>
> (A) THE ADMISSION OF PERSONS AND UNINCORPORATED ASSOCIATIONS AS MEMBERS AND AS EX OFFICIO MEMBERS AND THE QUALIFICATION OF AND THE CONDITIONS OF MEMBERSHIP;
>
> (B) THE FEES AND DUES OF MEMBERS;
>
> (C) THE ISSUE OF MEMBERSHIP CARDS AND CERTIFICATES;
>
> (D) THE SUSPENSION AND TERMINATION OF MEMBERSHIPS BY THE CORPORATION AND BY THE MEMBER;
>
> (E) THE TRANSFER OF MEMBERSHIPS;

IT IS OUR VIEW THAT NOTWITHSTANDING THE POWERS THAT A CORPORATION MAY HAVE AS INDICATED BY WALTON V. BANK OF NOVA SCOTIA, SUPRA, THAT SECTION 112 OF THE CORPORATION ACT SPECIFICALLY GOVERNS THE INSTANT SITUATION. WHILE A CORPORATION MAY HAVE GENERAL POWERS WHICH AFFECT ITS RELATIONS WITH THIRD PERSONS, SECTION 112 EXPRESSLY COVERS ITS INTERNAL PROCEDURES AND MORE SPECIFICALLY COVERS ITS INTERNAL PROCEDURES WITH RESPECT TO MEMBERSHIP.

ACCORDINGLY, AND NOTWITHSTANDING ITS GENERAL POWERS WE ARE OF THE OPINION THAT THE BY-LAWS WHICH ARE THE BASIS FOR THE APPLICANT'S MEMBERSHIP MUST NOT BE CONTRARY TO THE LETTERS PATENT OR SUPPLEMENTARY LETTERS PATENT.

6. IN THIS CASE THE LETTERS PATENT INDICATE THAT THE OBJECTS OF THE APPLICANT ARE TO REPRESENT EMPLOYEES OF THE GOVERNMENT OF THE PROVINCE OF ONTARIO, OR A BOARD, COMMISSION, OR OTHER EMANATION OF THE CROWN IN THE RIGHT OF ONTARIO OR AS A PUBLIC SERVANT WITHIN THE PROVISIONS OF THE PUBLIC SERVICE ACT (ONTARIO). IT IS CLEAR THAT THE EMPLOYEES OF THE RESPONDENT DO NOT FALL INTO THAT CATEGORY. IN THE VERSAFOOD'S CASE, SUPRA, THE BOARD SAID:

> IN THE VERSAFOOD SERVICES LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1967, P. 539 WHICH WAS AN EARLIER APPLICATION FOR CERTIFICATION MADE BY THE APPLICANT FOR THE SAME UNIT OF EMPLOYEES, THE BOARD WAS SATISFIED THAT THE RESPONDENT DID NOT COME WITHIN ANY OF THE OBJECT CLAUSES OF THE SUPPLEMENTARY LETTERS PATENT DATED APRIL 26TH, 1962. WE ARE NOT PERSUADED BY THE SUBMISSIONS OF THE REPRESENTATIVE OF THE APPLICANT THAT THERE IS ANY REASON FOR THE BOARD TO DEPART FROM ITS FINDING IN THE PREVIOUS APPLICATION. EVEN ASSUMING THAT SECTION 3(A) OF BY-LAW 65, AS AMENDED, IS BROAD ENOUGH TO PERMIT THE APPLICANT TO TAKE INTO MEMBERSHIP THE EMPLOYEES OF THE RESPONDENT, IN OUR VIEW, THE BY-LAW IS BEYOND THE SCOPE OF THE OBJECTS OF THE ASSOCIATION AS CONTAINED IN ITS SUPPLEMENTARY LETTERS PATENT.

IN THE CIRCUMSTANCES OF THIS CASE, AND PARTICULARLY HAVING REGARD TO THE PROVISIONS OF 112 OF THE CORPORATIONS ACT, WE ARE NOT PREPARED TO DEPART FROM THE REASONS IN THE VERSAFOOD CASE V. LIMITED INSTITUTIONS DIVISION UNIVERSITY OF GUELPH CASE. ACCORDINGLY, WE FIND THAT THE BY-LAWS WHICH PURPORTED TO EXTEND MEMBERSHIP IN THE APPLICANT TO EMPLOYEES CONCERNED IN THIS CASE ARE BEYOND THE SCOPE OF THE OBJECTS CLAUSE.

7. WE WISH TO FURTHER COMMENT THAT THE BOARD HAS CONSIDERED THE DECISION IN THE CIVIL SERVICE ASSOCIATION OF ONTARIO, INC. AND THE UNIVERSITY OF GUELPH, (BOARD FILE #11476-65-R, JUNE 2, 1966, UNREPORTED), WHICH GRANTED STATUS TO THE APPLICANT TO REPRESENT EMPLOYEES OF THE UNIVERSITY OF GUELPH. HOWEVER THERE ARE NO REASONS GIVEN IN THAT CASE FOR THE BOARD'S DECISION, AND ACCORDINGLY WE PREFER TO FOLLOW THE DECISION IN THE VERSAFOOD'S CASE.

8. We are further of the opinion that the word 'otherwise' in Paragraph (c) of the Supplementary Letters Patent is not broad enough to encompass the respondent corporation. Paragraph (c) must be considered in the light of Paragraph (b), so that in our opinion the word 'otherwise' refers to authorities in a governmental sense such as conservations authorities or park authorities.

9. For all these reasons the application is therefore dismissed.

17100-69-R: Deluxe Upholstering Employees Association (Applicant) v. DELUXE UPHOLSTERING LIMITED (Respondent).

BEFORE: R. A. Furness, Vice-Chairman and Board Members E. Boyer and R. W. Teagle.

APPEARANCES AT THE HEARING: Richard J. Hobson, Peter Schmitz for the applicant; R. G. Meunier, D. Douglass for the respondent.

DECISION OF R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBER R. W. TEAGLE: March 9, 1970.

1. This is an application for certification.

2. Prior to the hearing, the applicant was informed by the Board that it would be necessary for the applicant to establish that it is a trade union within the meaning of section 1(1)(j) of The Labour Relations Act.

3. The evidence established that notice of an organizational meeting of the applicant was given to employees of the respondent either by word of mouth or by means of a notice affixed to the respondent's bulletin board next to the time clock. The bulletin board had been erected some three or four months prior to the time of the notice of the organizational meeting. Mr. Peter Schmitz, an employee of the respondent and president of the applicant, testified that he affixed the notice of the organizational meeting on the bulletin board and that he did so without consulting Mr. Duncan Douglass, the respondent's factory manager, or anyone else in the respondent's employ.

Mr. Douglass testified that the bulletin board did not bear any designation that it was to be used only by the respondent's supervisory staff or solely for notices of an official nature. He stated that in addition to posting notice of this application and an earlier notice concerning an application for certification by the International

WOODWORKERS OF AMERICA, HE HAD ALSO POSTED A NOTICE ABOUT CANADA SAVINGS BONDS AND A POSTCARD FROM AN EMPLOYEE VACATIONING IN EUROPE. NEWSPAPER CLIPPINGS HAD ALSO BEEN POSTED ON THE BULLETIN BOARD FROM TIME TO TIME. THESE CLIPPINGS WERE NOT POSTED BY MR. DOUGLASS AND, WHILE HE ADMITTED THAT HE DID NOT KNOW WHO HAD POSTED THE CLIPPINGS, HE ASSUMED THAT THEY HAD BEEN POSTED BY EMPLOYEES. HE DID NOT ASCERTAIN WHO HAD POSTED THE CLIPPINGS AND STATED THAT IF HE HAD KNOWN WHO HAD POSTED THEM HE WOULD NOT HAVE CONTEMPLATED ANY DISCIPLINARY ACTION. MR. DOUGLASS STATED THAT HE SAW THE NOTICE OF THE ORGANIZATIONAL MEETING POSTED ON THE BULLETIN BOARD, BUT HE HAD NO IDEA AT THAT TIME WHO HAD POSTED THE NOTICE. HE MADE NO INQUIRIES AS TO WHO HAD POSTED THE NOTICE ON THE BULLETIN BOARD. HAVING REGARD TO THE FOREGOING, THE BOARD FINDS THAT THE RESPONDENT DID NOT PARTICIPATE IN THE FORMATION OF THE APPLICATION, NOR GIVE OTHER SUPPORT TO IT. REFERENCE IS MADE TO SECTION 10 OF THE LABOUR RELATIONS ACT.

4. AT THE ORGANIZATIONAL MEETING OF THE APPLICANT THE CONSTITUTION WAS ADOPTED AND OFFICERS WERE ELECTED BY PERSONS WHO BECAME MEMBERS OF THE APPLICANT. THE APPLICATIONS FOR MEMBERSHIP FILED BY THE APPLICANT IN SUPPORT OF THIS APPLICATION CONTAINED THE FOLLOWING SENTENCE:

> I ALSO HEREBY AUTHORIZE AND DIRECT MY EMPLOYER, DELUXE UPHOLSTERING LIMITED, TO DEDUCT MY ASSOCIATION DUES FROM WAGES DUE ME IN ACCORDANCE WITH THE PROVISIONS OF THE CURRENT COLLECTIVE BARGAINING AGREEMENT BETWEEN MY EMPLOYER AND THE ASSOCIATION AND TO REMIT THE MONEY SO DEDUCTED TO THE SECRETARY-TREASURER OF THE ASSOCIATION.

WHEN QUESTIONED ABOUT THE AUTHORIZATION FOR THE DEDUCTION OF DUES, MR. SCHMITZ ANSWERED THAT DUES WERE NOT YET BEING DEDUCTED AND THAT HE THOUGHT DUES WOULD BE DEDUCTED "AS SOON AS WE GET CERTIFICATION". THE TREASURER OF THE APPLICANT, MRS. JEAN BARKER, TESTIFIED THAT THERE HAD BEEN NO DECISION WITH MANAGEMENT ABOUT DEDUCTION OF DUES. MR. DOUGLASS GAVE EVIDENCE THAT THERE WAS NO AGREEMENT BY THE RESPONDENT TO DEDUCT DUES FOR THE APPLICANT. WE FIND THAT THERE WAS IN FACT NO DEDUCTION OF DUES BY THE APPLICANT FOR THE RESPONDENT AND THAT MR. SCHMITZ'S INFORMATION THAT DUES WOULD BE DEDUCTED FOLLOWING CERTIFICATION IS NOT ESTABLISHED BY THE EVIDENCE.

5. IN HIS DISSENTING OPINION, BOARD MEMBER MR. BOYER REFERS TO THE FACT THAT REFERENCE IS MADE IN THE DOCUMENTARY EVIDENCE OF MEMBERSHIP TO A DEDUCTION OF DUES "IN ACCORDANCE WITH THE PROVISION OF THE CURRENT COLLECTIVE AGREEMENT BETWEEN MY EMPLOYER AND THE ASSOCIATION." THE EVIDENCE ESTABLISHED THAT EMPLOYEES WHO BECAME MEMBERS OF THE APPLICANT DID SO BETWEEN DECEMBER 9 AND DECEMBER 15, 1969, AND AT A TIME WHEN AN APPLICATION BY ANOTHER TRADE UNION TO SECURE CERTIFICATION WAS BEFORE THE BOARD IN WHICH A REPRESENTATION VOTE WAS CONDUCTED. THERE WAS NO

EVIDENCE BEFORE THE BOARD THAT THE EMPLOYEES OF THE RESPONDENT WHO BECAME MEMBERS OF THE APPLICANT WERE COERCED INTO JOINING THE APPLICANT OR WERE MISLEAD INTO THINKING THAT THERE WAS NO ALTERNATIVE BUT TO JOIN THE APPLICANT.

6. HAVING REGARD TO THE FOREGOING, WE FIND THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

7. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. NO OBJECTION WAS MADE TO THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JANUARY 23, 1970, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DISSENT OF BOARD MEMBER E. BOYER: MARCH 9, 1970.

I DISSENT. BASED ON THE EVIDENCE OF MEMBERSHIP, PARTICULARLY THAT PORTION CONCERNING THE AUTHORIZATION FOR THE DEDUCTION OF DUES, AND THE HOLDING OUT THAT THERE WAS A COLLECTIVE AGREEMENT, I WOULD NOT HAVE ACCEPTED THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT.

17135-69-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) v. CHATEAU-GAI WINES LIMITED (RESPONDENT) v. LOCAL 103 OF THE CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J.E.C. ROBINSON, Q.C.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER J.E.C. ROBINSON, Q.C.: MARCH 19, 1970.

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2. The Board has considered the Report of the Examiner dated February 13, 1970 and the written representations of the representative of the applicant and counsel for the respondent with regard to the Report both dated February 25, 1970. It was agreed by the parties that the evidence of Henry Reynolds who is classified as a manager was representative of and applicable to the duties and responsibilities of all persons classified as manager.

3. Reynolds is a manager in one of the respondent's stores in Toronto. He supervises the work of three employees in the store, one of whom is classified as a relief manager, another who is classified as assistant manager, and a third person who is a part-time employee. At least once each month it is necessary for Reynolds to hire casual employees to assist in unloading stocks and over the period of a month there may be as many as ten persons under his direct supervision. This includes full-time, part-time and casual employees. With respect to casual help, it is left to Reynolds to choose the persons he wants to do the necessary work. He generally uses the same group of persons for casual help each month. Reynolds, however, must secure the permission of the head office to secure additional part-time staff. The head office usually grants his request.

4. Reynolds is supervised and receives instructions from a store supervisor. The employees work a forty-hour week. Reynolds, however, schedules the specific hours that the employees work without consultation with the store supervisor. He can also authorize casual time off. This only applies in the case of a few hours for dental appointments and the like. If an employee wished to be absent for longer periods Reynolds would communicate with the store supervisor before granting permission. Reynolds decides when overtime work is necessary, schedules such overtime and designates the employees who are to work. As well, he submits a vacation list for employees to the head office.

5. Reynolds is responsible for the training of new employees and reports on their progress to the store supervisor. While he does not attend meetings with members of management at which company policy, wages and personnel matters have been discussed, he has been at meetings with the vice-president for sales at which sales policies and the training of employees are discussed. He is kept advised of the respondent's sales policies as well by memorandums which are issued to store managers. If a new employee was not making satisfactory progress Reynolds would so advise his supervisor. In fact, in January of this year, Reynolds made such a report on an employee and recommended that his employment be terminated. The store supervisor accepted the recommendation and the employment of the employee in question was terminated. The employee concerned was a part-time employee and it was Reynolds who advised him of his discharge. In 1966, Reynolds also put in an unfavourable report on an employee who was drinking on the job and the employee was subsequently dismissed.

6. The starting rates for new employees are set by the store supervisor. Reynolds, however, has recommended wage increases for employees to his supervisor which have been accepted in the past. Reynolds reprimands employees when necessary but testified that he did not think he had the authority to issue a suspension. To his knowledge, no employee had ever been suspended. Reynolds works along with the other employees replenishing stocks on shelves. At the same time, however, it appears that he supervises their work. According to his evidence, he is performing supervisory duties for seven and a half of his normal eight-hour day, the remaining time being spent doing his reports and paper work. Reynolds does not have an office of his own in the store. Employees with problems, i.e. wanting to work certain hours, would consult with Reynolds and he has the authority to adjust the work schedule accordingly. Reynolds assistant could train employees in his absence and also could perform Reynolds duties. Reynolds, however, is the person responsible to head office for the operation of the store.

7. It appears from the Report that other than casual employees and part-time employees (with the approval of his supervisor) Reynolds does not hire new employees. He can and has recommended to his supervisor that a person be hired and believes the person was hired, although Reynolds did not interview him. More recently, i.e. February of 1969, Reynolds interviewed and hired an employee. Reynolds supervisor had advised him that he (Reynolds) could hire the employee concerned if he thought the man was suitable. Reynolds conceded that he would not have hired the employee without permission of his supervisor. For that matter, he would not increase or decrease regular staff without the store supervisor's approval.

8. Reynolds is responsible for all cash taken in at the store and also for the banking of the money. He and the assistant manager do the necessary bookkeeping. Reynolds is also responsible for taking a weekly inventory of stock and submits a monthly report to the head office on stock on hand, cash sales and disbursements. He is responsible as well for the ordering and replenishment of stock.

9. Based on the evidence contained in the Report of the Examiner, we find that Reynolds exercises a sufficient degree of control over the employees in the store of which he is manager and his scope for exercising independent initiative and discretion is such as to make him a member of management. The Board accordingly finds that persons employed in the classification of manager exercise managerial authority within the meaning of section 1(3)(b) of The Labour Relations Act and are not included in any of the bargaining units the Board finds to be appropriate for collective bargaining.

(See The Great Atlantic and Pacific Tea Company, Limited Case, OLRB M.R. July 1969, p. 485; OLRB M.R. August 1969, p. 602; OLRB M.R. September 1969, p. 728.)

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DECISION OF BOARD MEMBER E. BOYER: March 19, 1970.

I dissent with respect to the persons classified as manager. The evidence reveals that they only exercise minor supervisory responsibilities which are merely incidental to their main job functions. Having regard to the criteria set out in the Falconbridge Nickel Mines Limited Case, OLRB M.R. September 1966, p. 379, I find that the managers do not exercise managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act and should be included in the bargaining unit.

17225-69-R: Scarborough General Hospital Registered Nursing Assistants Bargaining Association (Applicant) v. Scarborough General Hospital (Respondent).

BEFORE: R. A. Furness, Vice-Chairman and Board Members E. Boyer and J.E.C. Robinson.

APPEARANCES AT THE HEARING: L. S. Fairbairn, Miss M. Walsh, Mrs. D. Schofield, Miss E. Stevenson for the applicant; J. V. Cuff, W. R. Avery for the respondent.

DECISION OF THE BOARD: March 2, 1970.

1. This is an application for certification.

2. Prior to the hearing the applicant was advised by the Board that it would be required to prove that it is a trade union within the meaning of section 1(1)(j) of The Labour Relations Act.

3. At the hearing, counsel for the applicant called evidence to establish the holding of an organizational meeting at which the applicant "The Scarborough General Hospital Registered Nursing Assistants Bargaining Association" allegedly came into existence. At the organizational meeting on November 19, 1969, there was a discussion of the constitution and by-laws of "The Scarborough General Hospital Registered Nursing Assistants Bargaining Association" and those present purported to adopt this constitution. The Minutes of the organizational meeting held on November 19, 1969, record the fact

THAT THOSE PRESENT ENROLLED AS MEMBERS OF "THE SCARBOROUGH GENERAL HOSPITAL REGISTERED NURSING ASSISTANTS BARGAINING ASSOCIATION" AND THAT OFFICERS WERE ELECTED. THE EVIDENCE OF MEMBERSHIP FILED WITH THE APPLICATION FOR CERTIFICATION CONSISTED OF APPLICATIONS FOR MEMBERSHIP IN THE "SCARBOROUGH REGISTERED NURSING ASSISTANTS BARGAINING ASSOCIATION" TOGETHER WITH RECEIPTS INDICATING THE PAYMENT OF ONE DOLLAR IN EACH CASE. ALL BUT SEVEN OF THE APPLICATIONS FOR MEMBERSHIP FILED WITH THE APPLICATION FOR CERTIFICATION WERE DATED ON NOVEMBER 19, 1969, THE DATE ON WHICH THE ORGANIZATIONAL MEETING WAS HELD.

4. ON THE BASIS OF THE EVIDENCE BEFORE THE BOARD, WE FIND THAT THE APPLICANT NEVER CAME INTO EXISTENCE AS AN ORGANIZATION OF EMPLOYEES. THERE IS NO EVIDENCE THAT THE APPLICANT "THE SCARBOROUGH GENERAL HOSPITAL REGISTERED NURSING ASSISTANTS BARGAINING ASSOCIATION" EVER HAD MEMBERS AT ANY TIME WHO COULD EITHER ADOPT OR RATIFY THE CONSTITUTION OR ELECT OFFICERS FOR THE APPLICANT. THE BOARD THEREFORE FINDS THAT THE APPLICANT IS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

5. HAVING REGARD TO THE FOREGOING THE APPLICATION IS DISMISSED.

17287-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. MAL NICHOLSON LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: MARCH 18, 1970.

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3. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT HAS ALLEGED THAT THERE WERE THREE PERSONS IN THE BARGAINING UNIT IT HAS CLAIMED TO BE APPROPRIATE FOR COLLECTIVE BARGAINING ON JANUARY 28, 1970, THE DATE OF THE MAKING OF THE APPLICATION. THE RESPONDENT SUBMITS THAT THERE WAS ONLY ONE SUCH PERSON IN ITS EMPLOY ON THAT DATE.

4. THE BOARD HAS CONSIDERED THE REPORT OF THE EXAMINER DATED MARCH 3, 1970. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT LOUIS BRADY WAS PROPERLY ON THELIST FILED BY THE RESPONDENT. ON JANUARY 28, 1970, LOUIS BRADY WAS PAID AN OPERATOR'S RATE OF PAY.

THE PARTIES ARE IN DISAGREEMENT OVER THE CLASSIFICATION OF GERALD GODARD. THE APPLICANT CONTENDS THAT GODARD SHOULD BE INCLUDED ON THE LIST OF EMPLOYEES AS AN OPERATOR AND THEREFORE IN THE BARGAINING UNIT PROPOSED BY THE APPLICANT, WHILE THE RESPONDENT CLAIMS THAT HE WAS NOT HIRED AS AN OPERATOR AND SHOULD NOT BE INCLUDED ON THE LIST OF EMPLOYEES IN THE BARGAINING UNIT PROPOSED BY THE APPLICANT.

5. THE EVIDENCE ESTABLISHES THAT GODARD WAS ON JANUARY 28, 1970, PAID THE SAME RATE OF PAY AS OTHER EMPLOYEES CLASSIFIED BY THE RESPONDENT AS LABOURERS. HE USES A HAMMER TO SPIKE RAILWAY TIES AND A HAND SHOVEL TO REMOVE SNOW OR STONES. OTHER DUTIES INCLUDE LIFTING RAILS BY HAND AND CARRYING TIES. HE MIGHT ALSO USE A LINING BAR TO STRAIGHTEN OUT RAILS, A WRENCH TO TIGHTEN BOLTS AND A CROWBAR TO PULL OUT SPIKES. ON OCCASIONS HE OPERATES A BOOM TRUCK AND DID SO ON JANUARY 28, 1970, WHEN HE DROVE THE BOOM TRUCK AND ALSO OPERATED A CRANE, WHICH WAS HOUSED ON THE BACK OF THE TRUCK FOR ABOUT AN HOUR AND A HALF. GODARD HAS NEVER OPERATED A BULLDOZER BUT HAS OPERATED A SPIKING MACHINE, A POWER SAW, A BOLTING MACHINE AND A GAS HAMMER. HE IS ALWAYS PAID THE SAME RATE OF PAY AND GETS THE SAME FRINGE BENEFITS NO MATTER WHAT WORK HE DOES. FOR THE REMAINDER OF JANUARY 28, 1970, HE WORKED ON THE TRACK, SHOVELLED SNOW AND DID SOME SPIKING. IT IS APPARENT FROM THE EVIDENCE THAT IN GODARD'S EMPLOYMENT FOR THE RESPONDENT HE IS NOT ENGAGED FOR THE MAJORITY OF HIS TIME EACH DAY IN PERFORMING THE WORK OF AN OPERATOR BUT RATHER AS A GENERAL LABOURER.

6. IN CONSTRUCTION INDUSTRY CASES IT HAS BEEN THE PRACTICE OF THE BOARD WHERE EMPLOYEES ENGAGE IN THE WORK OF DIFFERENT CRAFTS (AND WHERE THEY ARE PAID ONLY ONE RATE) TO CHARACTERIZE THE CRAFT IN WHICH THEY ARE EMPLOYED FOR A MAJORITY OF THEIR TIME AS THE ONE GOVERNING THEIR STATUS ON AN APPLICATION FOR CERTIFICATION. FOR EXAMPLE SEE O. J. GAFFNEY LIMITED, O.L.R.B. MONTHLY REPORT, AUGUST 1964, P. 233; MCNAMARA CONSTRUCTION OF ONTARIO LIMITED, O.L.R.B. MONTHLY REPORT, DECEMBER 1964, P. 419; NEDAN FORMING COMPANY LIMITED O.L.R.B. MONTHLY REPORT, MAY 1965, P. 100; JOHNSON-KIEWIT SUBWAY CORPORATION O.L.R.B. MONTHLY REPORT JUNE 1966, P. 182.

7. THERE IS NO EVIDENCE BEFORE THE BOARD WITH RESPECT TO A THIRD PERSON ALLEGED BY THE APPLICANT TO BE IN THE BARGAINING UNIT IT HAS CLAIMED TO BE APPROPRIATE FOR COLLECTIVE BARGAINING ON JANUARY 28, 1970. HAVING REGARD TO THE FOREGOING THE BOARD FINDS THAT ON THE DATE OF THE MAKING OF THE APPLICATION THERE WAS ONLY ONE EMPLOYEE IN THE BARGAINING UNIT PROPOSED BY THE APPLICANT. IT FOLLOWS THAT HAVING REGARD TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT THERE IS NO APPROPRIATE BARGAINING UNIT AND THE APPLICATION MUST THEREFORE BE AND IS ACCORDINGLY DISMISSED.

17343-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. KEYSTONE GENERATOR & STARTER REBUILDERS LIMITED (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: D. M. STOREY, F. RAO FOR THE APPLICANT; J. B. NOONAN FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 6, 1970.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. IN THIS CASE THE APPLICANT FILED APPLICATIONS FOR MEMBERSHIP AND RECEIPTS, A DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 8) AND A DECLARATION WHICH STATED THAT THE EMPLOYEES INVOLVED IN THE APPLICATION HAVE COMPLIED WITH THE TERMS AND PROVISIONS OF THE APPLICANT'S CONSTITUTION AND RELEVANT BY-LAWS PERTAINING TO ELIGIBILITY FOR AND ACCEPTANCE INTO MEMBERSHIP. SEE MARGARET'S FINE FOODS LIMITED, BOARD FILE # 16950-69-R (UNREPORTED) FEBRUARY 1970.

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6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

17408-69-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) v. H'WK FORWARDING LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: W. W. TILLER AND W. REILLY FOR THE APPLICANT, WILLIAM S. COOK, ROBERT J. WARD AND C. KASTNER FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 12, 1970.

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2. The applicant has applied to be certified as bargaining agent for all employees of the respondent at Metropolitan Toronto.

3. The respondent was engaged in the business of operating a freight forwarding company. The respondent consolidates shipments of goods delivered to it and the company's employees are engaged full time in loading and unloading C.N.R. freight cars. These freight cars are taken by the C.N.R. to other company terminals or terminals of the company's agents outside of the Province of Ontario. At their destination, the freight cars are unloaded by the company's employees or employees of the company's agents, as the case may be, and are transhipped and delivered by other carriers.

4. The company leases its terminal facilities in Metropolitan Toronto from the Canadian National Railway Company and its lease provides in part that the company is "To use the demised premises only as an office and for storage purposes in connection with the pool car business of the Lessee".

5. It was the company's position that the company's operations were analogous to the operations of a stevedoring company whose employees would load and unload ships. Accordingly, the company relied upon the reasoning of the Court in Re Eastern Canada Stevedoring Company Limited Case, 1955 S.C.R. 529, and argued that the business carried on by the respondent was outside of the jurisdiction of this Board. The applicant having accepted the explanation of the respondent's operations as set out above conceded that this Board had no jurisdiction to proceed with this application.

6. Having regard to the representations of the parties, and in accordance with the decision in Re-Eastern Canada Stevedoring Company Limited Case and in view of the position taken by the applicant, the Board finds that it has no jurisdiction to proceed with this matter further and hereby terminates these proceedings.

INDEXED ENDORSEMENTS - TERMINATION

15422-68-R: Richard Tiffin, Mary Mason, Ronald McLean, Manuel Cavacas, Regina Vroman, and Tom Schinkelshoek, and others (Applicants) v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (Respondent) v. NORTH AMERICAN PLASTICS CO. LTD. (Intervener).

BEFORE: H. D. Brown, Vice-Chairman and Board Members
P. J. O'Keeffe and J.E.C. Robinson, Q.C.

DECISION OF H. D. BROWN, VICE-CHAIRMAN: MARCH 19, 1970.

1. AT THE CONTINUED HEARING IN THIS MATTER THE RESPONDENT ADVISED THE BOARD THAT IT ELECTED NOT TO CALL ANY EVIDENCE RELATING TO ITS CHARGES AND MOVED FOR DISMISSAL OF THE APPLICATION ON THE BASIS OF THE EVIDENCE SUBMITTED BY THE APPLICANT THEN BEFORE THE BOARD. ACCORDINGLY, THE BOARD RECEIVED THE ARGUMENTS OF THE PARTIES RELATING TO THE MERITS OF THE APPLICATION.

2. A NUMBER OF ISSUES WERE RAISED BY THE RESPONDENT AND CONSIDERABLE ARGUMENT WAS DIRECTED BY ALL PARTIES TO THESE ISSUES DEALING WITH THE VOLUMINOUS EVIDENCE OF THE APPLICANT. IN DEALING WITH A PETITION IN SUPPORT OF AN APPLICATION BROUGHT UNDER SECTION 43 OF THE LABOUR RELATIONS ACT THE APPLICANT MUST SATISFY THE BOARD AS TO THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE PETITION AND THE MANNER IN WHICH EACH SIGNATURE ON THE STATEMENT OF DESIRE WAS OBTAINED. IN CONSIDERING THE ORIGINATION OF THE PETITION IN THIS MATTER, A DOCUMENT PRECEDING THE PETITION WAS PRESENTED TO THE BOARD WHICH WE FIND WAS THE DOCUMENT WHICH SPAWNED THIS APPLICATION. THE EVIDENCE RELATING TO THIS DOCUMENT WAS ENTIRELY INSUFFICIENT TO ESTABLISH HOW IT CAME INTO EXISTENCE AND THE MANNER IN WHICH THE SIGNATURES WERE OBTAINED. WE FIND AS A FACT THAT THIS DOCUMENT GOES TO THE ROOT OF THE ORIGINATION OF THE APPLICATION AND THE PETITION IN SUPPORT OF IT. WE ARE NOT SATISFIED ON THE EVIDENCE THAT THE FIRST DOCUMENT MEETS THE TESTS OF THE BOARD. THEREFORE, ON THIS BASIS ALONE, WE CANNOT BE SATISFIED WITH THE PETITION FILED IN SUPPORT OF THE APPLICATION.

3. IN ADDITION, WE HAVE CAREFULLY EXAMINED AND WEIGHED THE EVIDENCE OF EACH OF THE WITNESSES WHO APPEARED IN THIS MATTER AND PARTICULARLY THAT OF MR. TIFFIN WHO IS CHIEFLY RESPONSIBLE FOR THE APPLICATION IN RELATION TO THE CRITERIA OF THE BOARD IN THESE MATTERS. IN THE DECISION OF THE BOARD DATED DECEMBER 9TH, 1969, THE BOARD DEALT WITH THE MOTION OF THE RESPONDENT TO DISMISS THE APPLICATION ON THE BASIS THAT MR. TIFFIN GAVE PERJURED EVIDENCE TO THE BOARD. THE BOARD DID NOT ACCEPT HIS PROPOSITION AT THAT TIME BUT STATED IN PARAGRAPH 3 THEREOF:

> "...WE DO NOT FEEL IT IS PROPER AT THIS POINT TO COMMENT IN ANY WAY WHATSOEVER ON THE EVIDENCE BEFORE US, WHICH WE RESERVE TO A PROPER TIME. WE SHOULD MAKE IT CLEAR, HOWEVER, THAT THE RESULT OF THIS DECISION SHOULD NOT BE INTERPRETED AS AN ACCEPTANCE OF ALL OF THE EVIDENCE BEFORE US."

WE HAVE NOW EXAMINED THE EVIDENCE IN RELATION TO THE ORIGINATION AND CIRCULATION OF THE PETITION AND FIND THAT THERE IS NOT SUFFICIENT

SUBSTANTIAL EVIDENCE TO ESTABLISH TO THE BOARD'S SATISFACTION THAT THE APPLICANT HAS BROUGHT THE APPLICATION WITHIN THE PROVISIONS OF SECTION 43 OF THE ACT. THE ONUS IS ON THE APPLICANT IN THAT REGARD AND WE FIND THAT THE APPLICANT DID NOT DISCHARGE THIS ONUS. THEREFORE THE BOARD HAS NO EVIDENCE BEFORE IT ON WHICH IT COULD BE SATISFIED THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY A TRADE UNION WITHIN THE MEANING OF SECTION 43(3) OF THE ACT.

4. ACCORDINGLY, THE APPLICATION IS DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: MARCH 19, 1970.

IN VIEW OF THE RESULT OF THE MAJORITY DECISION IT IS NOT NECESSARY FOR ME TO GIVE REASONS FOR MY POSITION WITH RESPECT TO THE BOARD'S DECISION DATED DECEMBER 9, 1969.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON Q.C.: MARCH 19, 1970.

IN THE BOARD'S INTERIM DECISION OF DECEMBER 9TH, 1969, THE BOARD RULED ON A MOTION BY THE RESPONDENT UNION THAT THE EVIDENCE OF RICHARD TIFFIN, THE CHIEF WITNESS AND ONE OF THE APPLICANTS, WAS NOT CREDIBLE.

THE MAJORITY OF THE BOARD, IN DISMISSING THE RESPONDENT'S MOTION SAID, INTER ALIA, AS FOLLOWS:-

> "WHILE THE BOARD MUST BE VERY CAREFUL NOT TO ACCEPT UNTRUTHFUL TESTIMONY IT IS UP TO THE BOARD TO DETERMINE THE ISSUE OF CREDIBILITY IN EACH INSTANCE. IN OUR VIEW, TO FIND THAT EVIDENCE IS PERJURED REQUIRES VERY STRONG AND PERSUASIVE PROOF TO MEET THE BOARD'S HIGH STANDARDS NOT ONLY OF ACCEPTING EVIDENCE, BUT IN REJECTING EVIDENCE ON THIS BASIS.
>
> ....THIS MOTION IS BASED SOLELY ON THE CREDIBILITY OF RICHARD TIFFIN AND WE ARE DEALING WITH THIS POINT ONLY. THE QUESTION OF IMPROPER MANAGEMENT INFLUENCE AS ALLEGED BY THE UNION IN ITS CHARGES AGAINST THE PETITION WAS NOT A BASIS FOR THE MOTION. THAT MATTER WILL BE HEARD AT ANOTHER TIME."

IT IS MY OPINION THAT BECAUSE THE MAJORITY DISMISSED THE MOTION OF THE RESPONDENT THAT THE EVIDENCE OF TIFFIN WAS "UNTRUTHFUL", A STRONG INFERENCE FOLLOWS, IN AN AFFIRMATIVE WAY, THAT WITHOUT FURTHER EVIDENCE TO INDICATE SOME DOUBT IN HIS TESTIMONY, HIS EVIDENCE MUST BE FOUND TO BE TRUTHFUL.

IT IS MY OPINION ALSO THAT WHILE A WITNESS MAY GIVE HONEST EVIDENCE BECAUSE OF A MISTAKEN BELIEF, THE WORD "TRUTH" IS NOT A VARIABLE WHICH IS SUBJECT TO A SIMILAR CONSTRUCTION. WHILE THE RESPONDENT UNION MADE NUMEROUS ALLEGATIONS AGAINST THE APPLICANTS AND THE COMPANY, AND INDICATED THROUGHOUT THE BOARD'S INVESTIGATION OF THE PETITION THAT IT WOULD BE CALLING EVIDENCE AGAINST THE APPLICANTS AND THE COMPANY, IT ELECTED NOT TO PROCEED TO CALL ANY EVIDENCE IN AN EFFORT TO SUBSTANTIATE SUCH ALLEGATIONS. THAT BEING SO, AND BASED SOLELY ON THE EVIDENCE CALLED BY THE APPLICANTS, I FIND THAT I MUST START WITH THE PREMISE THAT THE EVIDENCE GIVEN BY TIFFIN WAS UNTRUTHFUL.

THE NEXT CONSIDERATION IS WHETHER THE EVIDENCE PRESENTED IN SUPPORT IN THE APPLICATION HAS MET THE STANDARDS OF THE BOARD.

IN MY DELIBERATIONS ON THIS ASPECT OF THE CASE, MAY I CITE A FORMER DECISION OF THE BOARD WHICH INDICATES MANY OF THE STANDARDS CONSIDERED BY IT IN DETERMINING WHETHER THE EMPLOYEES HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION. THE CASE IS NOT DISSIMILAR TO THE INSTANT CASE.

IN CURVPLY WOOD PRODUCTS CASE, OLRB MONTHLY REPORTS, MAY 1968, P. 192 AT 193, THE BOARD, IN FINDING THAT THE APPLICANTS HAD MET THE BOARD'S STANDARDS, AND DIRECTING A REPRESENTATION VOTE SAID:-

> "1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT.
>
> 2. THE RESPONDENT IS THE BARGAINING AGENT FOR ALL EMPLOYEES OF CURVPLY WOOD PRODUCTS AT ORONO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.
>
> 3. THERE WAS SUBMITTED IN SUPPORT OF THIS APPLICATION A DOCUMENT BEARING THE SIGNATURES OF MORE THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH THE RESPONDENT IS THE BARGAINING AGENT. AT THE HEARING OF THIS MATTER, THE BOARD CONDUCTED ITS USUAL INQUIRY INTO THE ORIGINATION AND CIRCULATION OF THESE DOCUMENTS.

THE EVIDENCE IS IN PART THAT JACK CHAPMAN, A MATERIAL MAN IN THE EMPLOY OF THE INTERVENER FOR ABOUT 13 YEARS, WAS CONCERNED ABOUT THE UNION AND SPOKE TO MR. KLASNER, THE VICE-PRESIDENT OF THE INTERVENER, ON MONDAY, APRIL 15TH. MR. KLASNER TOLD CHAPMAN THAT HE HAD HELPED TO GET THE UNION IN, IT WAS UP TO HIM TO GET IT OUT AND SUGGESTED THAT HE CONSULT A LAWYER. ON APRIL 17TH CHAPMAN CALLED HIS LAWYER AND BOTH HE AND EDWARD BOUGHEN, WHO ALSO TESTIFIED IN THIS MATTER, ATTENDED AT HIS OFFICE ON THE MORNING OF APRIL 18TH. CHAPMAN EARLIER THAT MORNING HAD TELEPHONED HIS FOREMAN AND ADVISED HIM HE WAS TAKING THE DAY OFF TO ATTEND TO SOME BUSINESS BUT DID NOT EXPLAIN IT FURTHER TO HIM. HE SAID THAT HEHAD PREVIOUSLY TAKEN TIME OFF WITHOUT ANY EXPLANATION TO THE FOREMAN. HE WAS NOT PAID FOR THIS DAY OFF WORK.

4. THE SOLICITOR PREPARED THE PETITION AND ADVISED THEM TO TAKE IT AROUND TO THE EMPLOYEES AND ASK THEM TO READ THE HEADING AND TO SIGN IT IF THEY SO DESIRED. THE SOLICITOR ADVISED THEM THAT THEY COULD OBTAIN THE EMPLOYEES' SIGNATURES IN THE PLANT, AT HOME, OR ELSEWHERE. AFTER LEAVING THE SOLICITOR'S OFFICE THEY RETURNED TO THE PLANT KNOWN AS THE "SOUTH PLANT" AT ABOUT 9:30 A.M., AND THEREAFTER CIRCULATED THE DOCUMENT. SOME OF THE EMPLOYEES SIGNED IT WHILE ON THEIR BREAKS AND AT NOON HOUR, SOME AT NIGHT AT HOME, BUT A CONSIDERABLE NUMBER OF THEM SIGNED IN THE PLANT, DURING WORKING HOURS WHILE THEY WERE WORKING, SOME OF THOSE SIGNED IT AT THE SOUTH SHIPPING DOOR, OTHERS IN THE LUNCH ROOM AND MAINTENANCE ROOM. CHAPMAN ASSERTED THAT THERE WERE NO FOREMEN OR MEMBERS OF MANAGEMENT PRESENT WHEN HE OBTAINED ANY OF THE SIGNATURES NOR DID ANY OF THEM SEE HIM DURING THAT DAY. ALL OF THE SIGNATURES WERE OBTAINED ON APRIL 18TH. THEY ALSO WENT TO THE NEW PLANT KNOWN AS THE "NORTH PLANT" AND OBTAINED ABOUT 8 SIGNATURES OUTSIDE THAT PLANT BUT THEY DID NOT GO INTO THIS PLANT UNTIL AFTER 5:00 P.M. WHEN THEY APPROACHED TWO EMPLOYEES WITH THE PETITION WHO REFUSED TO SIGN. CHAPMAN STATED THAT THEY DID NOT GO INTO THE NORTH PLANT DURING WORK HOURS AS THEY COULD HAVE BEEN SEEN MUCH EASIER THERE THAN AT THE SOUTH PLANT. NONE OF THE EMPLOYEES WENT FROM ONE PLANT TO THE OTHER TO SIGN THE DOCUMENT. AFTER THE SIGNATURES WERE OBTAINED, BOTH HE AND BOUGHEN TOOK THE FOLLOWING DAY OFF, DROVE TO TORONTO AND DELIVERED

THE PETITION TO THE BOARD. AS WELL, CHAPMAN MAILED A COPY TO THE BOARD. CHAPMAN DID NOT INFORM HIS FOREMAN THAT HE WAS TAKING THIS DAY OFF NOR WAS HE PAID FOR THE DAY.

5. EDWARD BOUGHEN TESTIFIED THAT HE IS A LEAD HAND ON THE SANDERS AND HAS BEEN EMPLOYED BY THE INTERVENER FOR ABOUT 5 YEARS. ON THE 18TH OF APRIL HE ADVISED HIS FOREMAN THAT HE WOULD NOT BE AT WORK THAT DAY BUT DID NOT GIVE ANY REASONS TO HIM FOR HIS ABSENCE. HE ACCOMPANIED CHAPMAN THROUGHOUT THE DAY AND WITNESSED HALF OF THE SIGNATURES WHICH APPEAR ON THE DOCUMENT. THERE ARE APPROXIMATELY 70 - 75 EMPLOYEES AT THE SOUTH PLANT AND THE BALANCE AT THE NORTH PLANT. HE WAS IN THE SOUTH PLANT THAT DAY AND SAW THAT THE FOREMEN WERE AROUND BUT HE DID NOT SAY ANYTHING TO THEM NOR DID HE DISCUSS THE PETITION WITH ANYONE FROM MANAGEMENT. HE ALSO TOOK THE FOLLOWING DAY OFF WORK AFTER AGAIN ADVISING HIS FOREMAN THAT MORNING AND WENT WITH CHAPMAN TO TORONTO WITH THE PETITION. HE SAID THAT SOME OF THE SIGNATURES WERE OBTAINED AT BREAK PERIODS, SOME OUTSIDE THE PLANT, SOME IN THE PLANT IN THE SHIPPING ROOM. WHILE HE WAS ABSENT FROM WORK, ANOTHER EMPLOYEE TOOK OVER HIS REGULAR JOB. HE DID NOT TALK TO HIS FOREMAN THAT DAY AND COULD NOT SAY WHETHER THE FOREMAN SAW HIM IN THE PLANT.

6. WHAT THE BOARD IS SEEKING AMONG OTHER THINGS, IS REASONABLE ASSURANCE FROM PERSONS WITH FIRST HAND KNOWLEDGE THAT THE APPLICATION HAS NOT BEEN SPONSORED OR INITIATED BY MANAGEMENT, THAT THE PETITION IN SUPPORT OF THE APPLICATION REFLECTS THE VOLUNTARY DESIRES OF THE EMPLOYEES AND THAT MANAGEMENT HAS NOT IMPROPERLY INFLUENCED THEM IN ANY WAY. THE RESPONDENT SUBMITS THAT SINCE THE APPLICANTS WERE IN THE PLANT DURING WORKING HOURS CIRCULATING THE PETITION, THAT MANAGEMENT WAS AWARE OF IT AND THE EMPLOYEES WOULD, IN ANY EVENT, ASSUME THIS FACT AND ACCORDINGLY BE IMPROPERLY INFLUENCED IN SIGNING THE DOCUMENT. THEREFORE, THE DOCUMENT WOULD NOT RECORD THE VOLUNTARY DESIRES OF THOSE EMPLOYEES.

7. WE FIND NOTHING IMPROPER IN THE MANNER IN WHICH THE DOCUMENT ORIGINATED OR WAS PREPARED AND THERE IS NO SUGGESTION THAT MANAGEMENT WAS EVEN AWARE OF THE ACTIONS OF ITS EMPLOYEES. THE ONLY QUESTIONABLE AREA FOR OUR CONSIDERATION IS THE MANNER IN WHICH THE SIGNATURES WERE OBTAINED ON THE DOCUMENT. THE EVIDENCE OF THE APPLICANTS

RAISES CERTAIN SUSPICIONS THAT THE PRESENCE OF THE TWO MEN IN THE PLANT ON APRIL 18TH WAS OBSERVED BY AT LEAST A FOREMAN, BUT IT IS CLEAR THAT NO CONVERSATIONS TOOK PLACE BETWEEN THEM NOR WERE ANY MEMBERS OF MANAGEMENT PRESENT WHEN ANY OF THE SIGNATURES WERE OBTAINED. IN THE PYROTENAX OF CANADA LTD. CASE, 60 CLLC 865, C.L.S. 76-685:

> "HOWEVER IT IS ALSO CONTENDED THAT BECAUSE THE DOCUMENTS WERE PREPARED ON COMPANY TIME, WITH COMPANY EQUIPMENT AND WERE CIRCULATED DURING WORKING HOURS, THESE CIRCUMSTANCES INVALIDATE THE APPLICATION. IT IS OUR CONSIDERED OPINION THAT SUCH ACTIVITIES PER SE HAVE NEVER BEEN REGARDED BY THE BOARD AS INVALIDATING EITHER APPLICATIONS FOR CERTIFICATION AND OBJECTIONS THERETO OR APPLICATIONS FOR 'DECERTIFICATION'. THERE MUST BE ADDITIONAL EVIDENCE WHICH, TAKEN IN CONJUNCTION WITH SUCH ACTIVITIES, REASONABLY LEADS TO THE CONCLUSION THAT THERE HAS BEEN COMPANY SUPPORT OR SOME IMPROPER INFLUENCE BY THE COMPANY SUCH THAT IT CAN BE SAID THAT THE DOCUMENT OR DOCUMENTS DO NOT REFLECT THE VOLUNTARY DESIRES OF THE EMPLOYEES."

> 8. THERE WAS NO ATTEMPT MADE IN IMPUGN THE TESTIMONY OF THE APPLICANTS AND THERE IS NOTHING IN THEIR TESTIMONY TO INFER THAT THEY WERE NOT CREDIBLE WITNESSES AND THE RESPONDENT CALLED NO EVIDENCE TO ESTABLISH ANY IMPROPRIETY BY ANYONE. WE ACCEPT THE EVIDENCE OF THE APPLICANTS WHO WITNESSED ALL THE SIGNATURES ON THE DOCUMENT AND FIND THAT MANAGEMENT HAS NOT INHIBITED OR IMPROPERLY INFLUENCED THE EMPLOYEES FROM VOLUNTARILY EXPRESSING THEIR WISHES IN THIS MATTER."

HAVING REGARD TO THE STANDARDS SET FORTH IN THE PRECEDING CASE, I WOULD FIND WITHOUT HESITATION THAT THE APPLICANTS IN THE INSTANT CASE HAVE MET SUCH STANDARDS.

LASTLY, I MUST DEAL WITH THE FINDING OF THE MAJORITY THAT THE DOCUMENT PRECEDING THE PETITION GOES TO THE ROOT OF THE ORIGINATION OF THE PETITION IN SUPPORT OF THIS APPLICATION.

THE UNCONTRADICTED TESTIMONY OF THE APPLICANT WAS THAT THIS DOCUMENT WAS MERELY TO OBTAIN SOME INDICATION FROM THE EMPLOYEES OF THE COMPANY AS TO WHETHER THEY WOULD SUPPORT AN ATTEMPT TO RID THEMSELVES OF THE UNION AND TO OBTAIN A LAWYER TO ASSIST THEM IN SUCH VENTURE.

THIS IS TO BE CONTRASTED WITH CASES BEFORE THIS BOARD WHERE THE ORIGINAL DOCUMENT IS ITSELF AN ATTEMPT BY THE EMPLOYEES TO SIGNIFY THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE UNION.

THAT BEING SO, I WOULD FIND THE APPLICANT NEED NOT PROFFER ANY EVIDENCE WITH RESPECT TO THIS DOCUMENT AND THAT IT IS SEVERABLE FROM THE DOCUMENT USED IN THIS APPLICATION.

IN ALL THE CIRCUMSTANCES, THEREFORE, I WOULD HAVE FOUND THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE COMPANY HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT UNION AND WOULD HAVE DIRECTED A REPRESENTATION VOTE.

17399-69-R: CANADIAN SILK MANUFACTURING CO. LTD. (APPLICANT) V. GENERAL TRUCK DRIVERS' UNION, LOCAL 938 OF TORONTO, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT).

(RE: CANADIAN SILK MANUFACTURING CO. LTD., NORTH BAY).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: E.L. STRINGER, D.A.T. MCFARLANE AND GERALD PHILLIPS FOR THE APPLICANT, W. W. TILLER AND W. REILLY FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 11, 1970.

1. THE APPLICANT APPLIED ON FEBRUARY 18, 1970 UNDER THE PROVISIONS OF SECTION 45 OF THE LABOUR RELATIONS ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT. THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE APPLICANT ON DECEMBER 9, 1969. FOLLOWING CERTIFICATION, THE RESPONDENT UNION ALLOWED MORE THAN SIXTY DAYS TO ELAPSE DURING WHICH TIME IT FAILED TO GIVE TO THE APPLICANT WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT AS REQUIRED BY SECTION 11 OF THE ACT. INDEED, NO NOTICE TO BARGAIN WAS SERVED BY THE RESPONDENT UNION UP TO AND INCLUDING THE DATE OF THE HEARING IN THIS MATTER. THE RESPONDENT UNION ALSO FAILED TO FILE A REPLY IN THIS MATTER OR TO GIVE ANY SATISFACTORY EXPLANATION FOR ITS FAILURE TO SERVE A WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT. NO INTERVENTION WAS FILED BY ANY OF THE EMPLOYEES AFFECTED BY THIS APPLICATION.

2. HAVING REGARD TO THE FACTS AS SET OUT ABOVE AND ESPECIALLY IN THE ABSENCE OF ANY SATISFACTORY EXPLANATION FOR THE RESPONDENT UNION'S FAILURE TO SERVE THE NOTICE REQUIRED UNDER SECTION 11 OF THE LABOUR

RELATIONS ACT, THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 45(1) OF THE ACT, DECLARES THAT THE RESPONDENT UNION NO LONGER REPRESENTS THE EMPLOYEES OF CANADIAN SILK MANUFACTURING CO. LTD. AT NORTH BAY FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT.

17449-69-R: MRS. VICTORIA LYNK & MRS. KITTY WHITWORTH ON BEHALF REGISTERED NURSING ASST'S (APPLICANTS) v. SERVICE EMPLOYEES INTERNATIONAL - LOC. 204 (RESPONDENT).

(RE: TORONTO WESTERN HOSPITAL).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: MARCH 2, 1970.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT MADE UNDER SECTION 43 OF THE LABOUR RELATIONS ACT. THIS APPLICATION WAS MADE ON FEBRUARY 27, 1970. THE RESPONDENT IS THE BARGAINING AGENT FOR CERTAIN EMPLOYEES OF TORONTO WESTERN HOSPITAL, INCLUDING THE REGISTERED NURSING ASSISTANTS. THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND TORONTO WESTERN HOSPITAL WAS IN EFFECT UNTIL FEBRUARY 28, 1970. THIS APPLICATION, HAVING BEEN MADE WITHIN THE LAST TWO MONTHS OF THE OPERATION OF THE SAID COLLECTIVE AGREEMENT IS ACCORDINGLY TIMELY.

2. HOWEVER, ON JANUARY 2, 1970, CANADIAN UNION OF GENERAL EMPLOYEES (BOARD FILE NO. 17141-69-R) APPLIED TO DISPLACE THE RESPONDENT AS BARGAINING AGENT FOR ALL THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED. THE TERMINAL DATE FOR THAT APPLICATION WAS JANUARY 12, 1970. SINCE THE INSTANT APPLICATION WAS MADE SUBSEQUENT TO THE TERMINAL DATE OF THE APPLICATION BY CANADIAN UNION OF GENERAL EMPLOYEES THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 77(3)(B) OF THE LABOUR RELATIONS ACT, POSTPONES CONSIDERATION OF THE INSTANT APPLICATION UNTIL A FINAL DECISION HAS BEEN ISSUED ON THE ORIGINAL APPLICATION. WHEN THE FINAL DECISION HAS BEEN MADE ON THE ORIGINAL APPLICATION, THIS APPLICATION FOR TERMINATION WILL BE CONSIDERED SUBJECT TO THE FINAL DECISION ISSUED BY THE BOARD ON THE ORIGINAL APPLICATION. UNTIL SUCH FINAL DECISION IS MADE, THIS APPLICATION WILL NOT BE PROCESSED FURTHER.

INDEXED ENDORSEMENT - STRIKE UNLAWFUL

17469-69-U: BELMONT PLASTERING COMPANY LIMITED (APPLICANT) v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL 117 (RESPONDENT).

BEFORE: R. A. Furness, Vice-Chairman and Board Members O. Hodges and R. W. Teagle.

APPEARANCES AT THE HEARING: D. A. Peppiatt for the applicant; Walter R. Stevenson for the respondent.

DECISION OF THE BOARD: March 16, 1970.

1. This is an application for a declaration that a strike called or authorized by the respondent is unlawful.

2. The evidence established that the respondent union is a party to a collective agreement with the applicant effective from May 1, 1968 until April 30, 1971.

3. The evidence also established that on March 3, 1970, Angelo Burigana, the business manager of the respondent, together with Enzo Del Col an official of the respondent, visited the site in Metropolitan Toronto where the applicant was engaged in the performance of a building contract. On March 3, 1970, Burigana and Del Col spoke to the applicant's employees who are covered by the collective agreement and informed them that the applicant was delinquent in its monthly payments to the respondent's welfare fund and also in remitting the employees' monthly dues to the respondent. Although there is some conflict in the evidence as to what Burigana said to the employees and to the subsequent conduct of Burigana and Del Col, the Board accepts the testimony of Pietro Zanatta, an employee of the applicant and a member of the respondent, and of Federico Bonotto, the president of the applicant, in reference to the testimony of Angelo Burigana. Zanatta and Bonotto gave their evidence in a straightforward and sincere manner. Burigana, on the other hand, delivered his evidence in an equivocal manner and under cross-examination it was clear that there were several contradictions in his own testimony. The Board finds that the applicant called or authorized a strike commencing on March 4, 1970 engaged in by the employees covered by the collective agreement. On March 3, 1970, the applicant had in its employ beteen thirty and thirty-four members of the respondent. On March 4th, 5th and 6th none of these employees reported to perform the work scheduled by the applicant. By March 12, 1970, thirteen of the employees of the respondent who were in its employ on March 3 had returned to work, and, the applicant had been able to supplement its work force by some ten or eleven employees who were not members of the respondent. This strike is still being actively carried on by more than twenty of the employees who were in the applicant's employ on March 3, 1970.

4. Considerable argument was addressed to the Board by the parties as to whether the strike called or authorized by the respondent was an unlawful strike. The respondent relied upon Article 10(c)(5) of the collective agreement which states:

> "IF ANY EMPLOYER FAILS TO REMIT IN ACCORDANCE WITH SECTION 10(B)(3) ABOVE, THE UNION WILL FORTHWITH TERMINATE ANY AGREEMENT INTO WHICH IT MAY HAVE ENTERED WITH SUCH EMPLOYER".

THE RESPONDENT ARGUED THAT THE FAILURE OF THE APPLICANT TO MAKE CERTAIN PAYMENTS IN RESPECT OF A WELFARE FUND AND MONTHLY DUES FOR THE EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT ENABLED IT TO TERMINATE THE AGREEMENT. THIS ARGUMENT, WHILE IT MAY BE PERFECTLY SOUND IN THE CONTEXT OF CERTAIN COMMERCIAL CONTRACTS HAS NO PLACE IN THE FIELD OF LABOUR RELATIONS LAW WHEN THE PROVISIONS OF THE LABOUR RELATIONS ACT ARE CONSIDERED. SECTION 34(1) STATES:

> "EVERY COLLECTIVE AGREEMENT SHALL PROVIDE FOR THE FINAL AND BINDING SETTLEMENT BY ARBITRATION, WITHOUT STOPPAGE OF WORK, OF ALL DIFFERENCES BETWEEN THE PARTIES ARISING FROM THE INTERPRETATION, APPLICATION, ADMINISTRATION OR ALLEGED VIOLATION OF THE AGREEMENT, INCLUDING ANY QUESTION AS TO WHETHER A MATTER IS ARBITRABLE."

AND SECTION 39(3) STATES:

> "A COLLECTIVE AGREEMENT SHALL NOT BE TERMINATED BY THE PARTIES BEFORE IT CEASES TO OPERATE IN ACCORDANCE WITH ITS PROVISIONS OR THIS ACT WITHOUT THE CONSENT OF THE BOARD ON THE JOINT APPLICATION OF THE PARTIES."

THE PARTIES TO THE SAID COLLECTIVE AGREEMENT HAVE PURPORTED, BY THE PROVISIONS OF ARTICLE 10(c)(5) TO TAKE THEMSELVES OUT OF THE PROVISIONS OF SECTION 34(1) AND SECTION 39(3) OF THE LABOUR RELATIONS ACT AND TO MAKE A LAW TO THEMSELVES OUTSIDE ITS EVIDENT SCOPE AND INTENT. WE ARE OF THE OPINION THAT THE PARTIES ARE NOT COMPETENT TO ENACT PRIVATE LEGISLATION WHICH WOULD PERMIT CONDUCT WHICH THE LABOUR RELATIONS ACT MANIFESTLY PROHIBITS - SEE NICHOLAS ZACOTA CASE, OLRB MONTHLY REPORTS, JUNE 1969, P. 399. IN OUR OPINION, ARTICLE 10(c)(5), PURPORTING AS IT DOES TO PERMIT THE RESPONDENT TO TERMINATE THE AGREEMENT BEFORE IT CEASES TO OPERATE IN ACCORDANCE WITH ITS PROVISIONS, IS INVALID AND CANNOT BE ERECTED BY THE RESPONDENT AS A DEFENCE AGAINST A CHARGE INVOLVING ALLEGATIONS WITH RESPECT TO AN UNLAWFUL STRIKE. THE BOARD THEREFORE FINDS THAT THE STRIKE CALLED OR AUTHORIZED BY THE RESPONDENT OCCURRED DURING THE LIFE OF AN EXISTING COLLECTIVE AGREEMENT BETWEEN THE PARTIES.

5. The testimony before the Board established that the root cause of the strike called or authorized by the respondent was the failure of the applicant to make certain required payments to the respondent's welfare fund, and also in remitting the employees' monthly dues to the respondent. The applicant was delinquent with respect to payments to the welfare fund for the months of December 1969 and January 1970 and was also delinquent for the month of January 1970 with respect to the payment of dues to the respondent. As soon as these deficiencies were discovered by the applicant, its president Federico Bonotto made strenuous efforts to rectify the applicant's delinquencies. There is also evidence that during 1969 the applicant was also late in making similar payments in respect to welfare and dues. These earlier delinquencies occurring during the middle of 1969 were, however, corrected.

Angelo Burigana refused to accept Bonotto's explanation for the more recent delinquency in respect of welfare and dues or to accept tendered payment by the applicant. The respondent's mode of behavious was consistent only with teaching the applicant a lesson. While the Board fully appreciates the applicant's laxity in making the required payments, it was apparent from the evidence that the applicant's laxity was due to the disorganized state of its administrative facilities rather than to a wilful refusal to live up to its obligations under the collective agreement.

In deciding whether the Board should exercise its discretion under section 67 of The Labour Relations Act and make the declaration sought by the applicant, the Board has viewed the declaration primarily as an instrument in aiding the settlement of labour disputes. Accordingly, the Board has exercised its discretion in making declarations for the purpose of encouraging the resolution of the issues in dispute. The Board has also recognized that a declaration serves the auxiliary purpose of informing the employer, the trade union, the employees and the general public that the strike action in question is unlawful. In addition, a declaration acts as a guide to the parties concerned with respect to their future conduct. See National Refractories Ltd. case 63 CLLC ¶16,276; CLS 76-930; Fiberglas Canada Limited case, 52 CLLC ¶17,033; CLS 76-337; and Arvo Tuomi case 53 CLLC ¶17,052; CLS 76-387.

7. An additional factor in this application is Article 10(c)(5) of the collective agreement, which purports to give the respondent the right to terminate the agreement and therefore, according to its own interpretation, to call its members off the job. The parties are co-signatories to a collective agreement which contains the invalid article 10(c)(5). These circumstances might well be viewed to be sufficiently exculpatory to persuade the Board to decline to grant

CONSENT TO PROSECUTE THE RESPONDENT FOR CALLING OR AUTHORIZING AN UNLAWFUL STRIKE ON AN INITIAL APPLICATION. A DECLARATION SUCH AS THE ONE SOUGHT IN THE PRESENT INSTANCE, IS NOT PUNITIVE BUT RATHER INFORMATIVE IN NATURE. THIS BEING THE CASE THE CIRCUMSTANCES REFERRED TO IMMEDIATELY ABOVE HAVE, IN THE PRESENT APPLICATION, LESS SIGNIFICANCE THAN THEY MIGHT HAVE HAD IN AN APPLICATION FOR CONSENT TO PROSECUTE THE RESPONDENT. SEE FALCONBRIDGE NICKEL MINES LIMITED CASE 60 CLLC ¶16,180; CLS 76-704 AND NICHOLAS ZACOTA CASE, SUPRA.

8. IN THE LIGHT OF THE FOREGOING, THE BOARD FINDS THAT THE RESPONDENT UNION CALLED OR AUTHORIZED THE STRIKE ENGAGED IN BY THE EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT DURING THE TERM OF OPERATION OF THE COLLECTIVE AGREEMENT AND THE BOARD ACCORDINGLY DECLARES THAT THE STRIKE ENGAGED IN BY THE EMPLOYEES COVERED BY THE SAID COLLECTIVE AGREEMENT BINDING UPON THE RESPONDENT AS AN UNLAWFUL STRIKE AND WAS CALLED OR AUTHORIZED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 55 OF THE LABOUR RELATIONS ACT.

9. AT THE COMMENCEMENT OF THE HEARING, COUNSEL FOR THE RESPONDENT REQUESTED AN ADJOURNMENT ON THE GROUNDS THAT THE TWO COUNSEL IN HIS FIRM WHO NORMALLY HANDLED LABOUR RELATIONS MATTERS WERE COMMITTED FOR THAT DAY AND WERE UNAVOIDABLY ABSENT FROM TORONTO. COUNSEL FOR THE RESPONDENT FURTHER ADDED THAT HAVING JUST COMPLETED A BAR ADMISSION COURSE FOR THE PROVINCE OF ONTARIO, HE WAS INEXPERIENCED IN APPLICATIONS OF THIS KIND. THIS REQUEST FOR AN ADJOURNMENT WAS OPPOSED BY COUNSEL FOR THE APPLICANT. THE BOARD DENIED THE REQUEST FOR THE REASON THAT IT TREATS APPLICATIONS SUCH AS THIS ONE WITH THE UTMOST URGENCY.

HAVING HEARD THE EVIDENCE CALLED BY COUNSEL AND HAVING LISTENED TO THE REPRESENTATIONS AND ACCOMPANYING ARGUMENTS THEREON, THE BOARD OBSERVES THAT BOTH COUNSEL VERY ABLY REPRESENTED THEIR RESPECTIVE CLIENTS.

INDEXED ENDORSEMENTS - SECTION 65

17010-69-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) v. O. & W. ELECTRONICS LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: R. RUSSELL AND A. JENKYN FOR THE COMPLAINANT; MICHAEL GORDON AND R. BOZECK FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER H. F. IRWIN:

MARCH 12, 1970.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT PATRICIA PUNA HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE ACT. THE COMPLAINANT REQUESTS THAT THE AGGRIEVED PERSON BE RETURNED TO HER FORMER JOB WITH FINANCIAL COMPENSATION AND SENIORITY RESTORED.

2. ON NOVEMBER 20, 1969, THE RESPONDENT, THROUGH THE SUPERVISOR, LAFFERTY, ADVISED MRS. PUNA THAT SHE WAS BEING PLACED ON INDEFINITE LAY-OFF AND TERMINATED HER EMPLOYMENT AS OF THAT DATE. THE COMPLAINANT ALLEGES THAT THE LAY-OFF WAS ARRANGED TO GET RID OF MRS. PUNA BECAUSE OF HER ACTIVITIES ON BEHALF OF THE UNION.

3. MRS. PUNA WAS ACTIVE IN AN ORGANIZING CAMPAIGN CONDUCTED BY THE COMPLAINANT AMONG EMPLOYEES OF THE RESPONDENT. SHE ARRANGED AN ORGANIZATIONAL MEETING AT HER OWN HOUSE AND ATTENDED VARIOUS UNION MEETINGS. SHE TESTIFIED THAT SHE HAD SIGNED UP PEOPLE FOR THE UNION.

4. MRS. PUNA STATED THAT SHE HAD HAD MANY CONVERSATIONS WITH DAVID LAFFERTY, SUPERVISOR, AND MICHAEL MEXIS, FOREMAN, CONCERNING THE UNION. SHE STATED THAT SHE INITIATED THE FIRST OF THESE CONVERSATIONS WHEN SHE ASKED LAFFERTY, WHEN SHE FIRST HEARD OF THE UNION, WHAT HE THOUGHT ABOUT UNIONS. SHE STATED THAT HE DID NOT SAY MUCH. LAFFERTY AND MEXIS, MRS. PUNA SAID, ASKED HER FROM TIME TO TIME HOW THE UNION WAS PROGRESSING. SHE STATED THAT SHE FELT SHE HAD TO BE CAREFUL AND PLAY A CAT AND MOUSE GAME WITH THEM. SHE SAID THAT QUESTIONS WERE ASKED ALMOST EVERY DAY. FOLLOWING A UNION MEETING HELD ON NOVEMBER 16TH, LAFFERY, ACCORDING TO MRS. PUNA, ASKED IF IT LOOKED AS THOUGH THE UNION WERE GOING TO COME IN AND SHE REPLIED THAT IT LOOKED VERY WELL. SHE SAID, HE ASKED ABOUT THE MEETING AND THAT SHE TOLD HIM NOT VERY MANY WERE THERE. HIS RESPONSE, MRS. PUNA STATED, WAS THAT SHE COULD NOT TELL HIM THAT THAT HE KNEW NINETY NINE PER CENT OF THOSE WHO WERE THERE AND THAT HE SAID THE COMPANY HAD SPIES AND KNEW WHAT WAS GOING ON - THAT HE KNEW TWO WEEKS IN ADVANCE WHEN THERE WAS GOING TO BE A UNION MEETING.

5. MRS. PUNA ALSO TESTIFIED THAT BEFORE THE MEETING OF NOVEMBER 16TH, LAFFERTY HAD BEEN TALKING TO HER ABOUT PRODUCTION AND THE FACT THAT THERE WAS TOO MUCH OVERTIME. THERE WAS TALK ABOUT THE UNION COMING IN AND, SHE SAID, ABOUT THE EMPLOYEES WORKING ON PANELS. LAFFERTY, SHE SAID, STATED THAT HE WOULD FIRE A COUPLE OF GUYS TO SCARE OFF THE OTHERS. IN CROSS-EXAMINATION, SHE SAID "HE DID NOT SAY TO SCARE OFF THE UNION - HE SAID TO SCARE OFF THE PEOPLE. WE WERE TALKING ABOUT THE UNION AND ABOUT PRODUCTION. I TOOK IT TO MEAN TO SCARE OFF THE UNION."

6. Mrs. Puna related how she had been told by her supervisor that she was doing well and might become a lead hand. She stated that she had been asked to train three girls, but they had all left before training was completed. She testified that an employee with less seniority and whose work she could do, was retained while she was laid off. It was also brought out in testimony that on November 4th, 1969, the Company advertised for male and female help for light factory work - experience not necessary.

7. Lafferty and Mexis both gave evidence. They freely and frankly admitted that they were very interested in the union and that they frequently discussed its progress with Mrs. Puna and with other employees whom they supervised. Both had been union members at one time. Lafferty had been president of a union. Lafferty said there was quite a lot of talk going on about the union and that he and Mexis got their knowledge on the floor of what had taken place at the union meetings. He stated that although he was aware of practically everyone who attended the meetings, he did not know who were actually members of the union and this included Puna.

8. Lafferty stated that he noticed late in October that there was a general slack off and that the Company was beginning to eat into back orders. He talked to Mexis and they came to the conclusion that they were overstaffed. They contacted Bozeck, the General Manager, and told him that because of the decrease in quantity of work, they would have to cut down staff. This was about the first part of November.

9. Lafferty and Mexis were told to prepare a list of ten people who they could let go. They reported to Bozeck, who recorded the names and numbers of the persons Lafferty and Mexis proposed to let go. Lafferty says that Bozeck told him to reconsider the list and ensure that nobody was being let go who would be needed later. Lafferty said that he and Mexis talked the list over and confirmed it. There was a list of nine names filed with the Board. At the date of the hearing, five of these had been laid off. One employee who had been slated for lay-off was, as we understand the evidence, transferred to another department.

10. Lafferty was very positive in his assertion that he selected the list for lay-off. He said that, to his knowledge, two of the persons on the list had attended union meetings and five had not attended them. He was equally positive in his testimony that union affiliation had nothing to do with the list. He said it was up to him to make the panel department pay and it was with that in mind that he made his selection. Mexis confirmed that selection was made on the basis of who could best do the jobs available. Lafferty added that

THERE WERE TWO OR THREE EMPLOYEES KEPT ON WHO ARE VERY STRONG FOR THE UNION AND THAT UNION CONNECTIONS HAD NOTHING TO DO WITH THE SELECTION OF WORK FORCE. BOTH SUPERVISORS ADMIT THAT PUNA WAS COMPETENT AT HER JOB AND THAT THEY WOULD RE-EMPLOY HER IF AN OPENING AROSE. THEY DENIED, HOWEVER, THAT SHE COULD DO THE WORK PERFORMED BY THE JUNIOR FEMALE EMPLOYEE REFERRED TO BY PUNA AND INDICATED THAT PUNA'S CLAIM TO HAVING TRAINED THREE EMPLOYEES WAS SOMEWHAT OVERBLOWN.

11. WE WERE MUCH IMPRESSED BY THE CANDOUR AND FORTHRIGHTNESS OF THE WITNESSES LAFFERTY AND MEXIS AND WE ACCEPT THEIR TESTIMONY WITH RESPECT TO THE NECESSITY OF LAY-OFF AND THE MANNER IN WHICH THE LIST OF PERSONS TO BE LAID OFF WAS DETERMINED. WE BELIEVE ON THE BASIS OF LAFFERTY'S EVIDENCE THAT THE ADVERTISEMENT FOR HELP WAS NOT DIRECTED TOWARDS HIS DEPARTMENT. IN THE RESULT THEN, WE FIND THAT THE COMPLAINANT HAS NOT DISCHARGED THE ONUS RESTING UPON IT IN MATTERS OF THIS NATURE AND THE COMPLAINT IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER O. HODGES: MARCH 12, 1970.

I DISSENT.

MY UNDERSTANDING OF THE EVIDENCE CONCERNING MRS. PUNA MARKED HER AS ONE RECOGNIZED BY MANAGEMENT AS PARTICULARLY INFLUENTIAL IN THE ORGANIZING CAMPAIGN FOR THE UNION.

THERE IS RECOGNITION BY THE BOARD OF DISCRIMINATION BY THE COMPANY AGAINST ANOTHER EMPLOYEE FOR UNION ACTIVITY, AND THE RE-IN-STATEMENT OF THAT EMPLOYEE WAS DIRECTED BY THE BOARD.

I FIND THAT THE DISMISSAL OF MRS. PUNA WAS A PART OF THE OVERALL ANTI-UNION ACTIVITY OF THE MANAGEMENT OF THIS COMPANY.

I WOULD THEREFORE RE-INSTATE MRS. PUNA WITH FULL COMPENSATION.

17087-69-U: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (COMPLAINANT) v. CYRVILLE CHRYSLER DODGE LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: MAURICE W. WRIGHT, Q.C. AND JAMES LEVIA FOR THE COMPLAINANT; J. C. SIROIS FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 5, 1970.

. . .

2. This is a complaint under section 65 of The Labour Relations Act alleging that Jean Marie Lamarche has been dealt with by the respondent contrary to the provisions of sections 3, 48, 50(a), 50(c) and 52 of the Act. The complainant requests that Jean Marie Lamarche be reinstated and compensated for time lost.

3. Lamarche was employed by the respondent as a licensed mechanic in May 1969 and was discharged on December 5, 1969. The evidence of the respondent was directed to establishing that the reason for the discharge was that Lamarche had too many of the repair jobs which he had done returned for further work. These returns were referred to by the parties as "come backs". In addition, there was evidence that Lamarche used profane language in presence of customers of the respondent. The respondent also stated that a further reason for the discharge was the failure of Lamarche to punch the time-card with respect to repairs made under warranty.

4. The complainant's position was that his attitude towards work, his conduct with respect to card punching and his language were no worse than any other mechanics on the staff of the respondent and that there had been several meetings at which these faults had been pointed out to the mechanics as a body. The respondent's reply to this was that while there had been general reprimands issued, Lamarche's conduct was considerably worse than that of his fellow mechanics.

5. It is obvious that in order to succeed in discharging the onus which rests on it, the complainant must establish, as one of the essential ingredients of its case, that the respondent had knowledge of the union activities of the discharged employee. It is well recognized that proof of such knowledge presents difficulties to any complainant because of the fact that the true reasons for a discharge are very often solely within the knowledge of the employer. The complainant has seldom available to it direct evidence and is forced to rely upon inferential evidence.

6. In the present instance, there is no direct evidence that the respondent was aware of the union affiliation and activities of Lamarche concerning which he gave evidence. Furthermore, we find on a careful examination of all of the evidence that there is no evidence of a substantial nature from which we can be satisfied by reasonable inference that the respondent was aware that Lamarche was active on behalf of the union. On the other hand, we find the respondent's grounds for the discharge to be not without substance.

7. In the result then, we find that the complainant has not discharged the onus resting upon it to show by evidence of a substantial nature that Lamarche was dealt with by the respondent contrary to the provisions of The Labour Relations Act. The complaint is therefore dismissed.

INDEXED ENDORSEMENT - SECTION 33(2)

17462-69-M: LIVINGSTON INDUSTRIES LIMITED (APPLICANT) v. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: MARCH 17, 1970.

1. THIS IS AN APPLICATION UNDER SECTION 33(2) OF THE LABOUR RELATIONS ACT TO HAVE A "NO STRIKE - NO LOCK-OUT" CLAUSE ADDED TO THE COLLECTIVE AGREEMENT PRESENTLY IN OPERATION BETWEEN THE PARTIES AND COVERING EMPLOYEES OF THE APPLICANT AT ITS HAGERSVILLE FACTORY IN THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT. THE AGREEMENT IN QUESTION ID DATED FEBRUARY 11, 1970 AND BECAME EFFECTIVE ON NOVEMBER 1, 1969 AND REMAINS IN EFFECT UNTIL OCTOBER 31, 1971.

2. SECTION 33 OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:

> 33.-(1) EVERY COLLECTIVE AGREEMENT SHALL PROVIDE THAT THERE WILL BE NO STRIKES OR LOCK-OUTS SO LONG AS THE AGREEMENT CONTINUES TO OPERATE.
>
> (2) IF A COLLECTIVE AGREEMENT DOES NOT CONTAIN SUCH A PROVISION AS IS MENTIONED IN SUBSECTION 1, IT MAY BE ADDED TO THE AGREEMENT AT ANY TIME BY THE BOARD UPON THE APPLICATION OF EITHER PARTY.

3. IT IS CLEAR THAT THE AGREEMENT BETWEEN THE PARTIES, A COPY OF WHICH WAS FILED WITH THE APPLICATION, DOES NOT CONTAIN THE CLAUSE ENVISAGED BY SUBSECTION 1 OF SECTION 33. ALTHOUGH THE RESPONDENT TRADE UNION WAS SERVED WITH NOTICE OF THE APPLICATION AND INVITED TO MAKE COMMENTS WITH RESPECT THERETO ON OR BEFORE MARCH 16, 1970, IT HAD FAILED TO FILE WITH THE BOARD ANY WRITTEN REPRESENTATIONS.

4. THE BOARD IS SATISFIED THAT THE APPLICANT IS ENTITLED TO THE RELIEF SOUGHT. THE FOLLOWING PROVISION IS THEREFORE ADDED TO THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES EFFECTIVE FORTHWITH:

> THERE SHALL BE NO STRIKES OR LOCK-OUTS SO LONG AS THIS AGREEMENT CONTINUES TO OPERATE.

INDEXED ENDORSEMENT - JURISDICTIONAL DISPUTE

17161(A)-69-JD: ABE DICK MASONRY LIMITED (COMPLAINANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 18, AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND R. W. TEAGLE.

DECISION OF THE BOARD: MARCH 31, 1970.

. . .

2. IN ORDER TO CLARIFY ITS POSITION PRIOR TO THE COMMENCEMENT OF THE HEARINGS SET FOR APRIL 13, 14 AND 15, 1970, THE BOARD ISSUES THE FOLLOWING INTERIM DECISION WITH RESPECT TO THE QUESTIONS RAISED AT THE PRIOR HEARINGS AS TO ITS JURISDICTION TO HEAR THIS COMPLAINT.

3. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 18, HEREINAFTER REFERRED TO AS CARPENTERS, CHALLENGED THE BOARD'S JURISDICTION ON TWO GROUNDS, NAMELY (1) WHETHER THERE WAS A WORK ASSIGNMENT DISPUTE; (2) WHETHER THERE WERE PERSONS EMPLOYED BY THE COMPLAINANT WHO WERE MEMBERS OF THE DISPUTING TRADE UNIONS AT THE RELEVANT TIME.

4. THE BOARD STATED AT THE FIRST HEARING HELD ON JANUARY 14, 1970 AND REITERIATED THE STATEMENT AT THE HEARING HELD ON JANUARY 21, 1970 THAT THERE WAS IN FACT A WORK ASSIGNMENT DISPUTE AND THE BOARD ISSUED AN INTERIM ORDER WITH RESPECT TO THAT DISPUTE. THE CARPENTERS UNDERTOOK TO HONOUR THE INTERIM ORDER AND THE CASE WAS ADJOURNED ON THE UNDERSTANDING THAT THE BOARD WOULD HEAR FURTHER EVIDENCE AND ARGUMENT RESTRICTED TO THE FIRST POINT ENUMERATED ABOVE. WE PROPOSE TO DEAL NOW WITH THAT POINT.

5. THE EVIDENCE ESTABLISHES THAT ON JANUARY 8, 1970, THE COMPLAINANT ARRANGED TO EMPLOY KEITH MINOR, WHO IS A MEMBER OF THE CARPENTERS, ON ONE OF ITS PROJECTS IN HAMILTON AT QUIGLEY SCHOOL. IT WAS ESTABLISHED THAT MINOR WORKED UNDER THE DIRECT SUPERVISION OF THE COMPLAINANT AND CARRIED OUT WORK ON THE PROPERTY OF THE COMPLAINANT AS DIRECTED BY ITS SUPERINTENDENT ON THE QUIGLEY JOB. AT THE CONCLUSION OF THE DAY'S WORK HE WAS PAID THE GOING RATE BY THE COMPLAINANT, INCLUDING ONE HOUR'S PAY IN LIEU OF NOTICE.

6. IT WAS SUBMITTED BY THE CARPENTERS THAT MINOR WAS EMPLOYED ON JANUARY 8, 1970 SOLELY FOR THE PURPOSE OF QUALIFYING THE COMPLAINANT AS AN EMPLOYER HAVING EMPLOYEES IN THE DISPUTING UNION AT THE RELEVANT TIME. THE CARPENTERS ARGUED THAT BECAUSE OF THE CIRCUMSTANCES OF HIS HIRING, MINOR WAS NOT A BONA FIDE EMPLOYEE OF THE COMPLAINANT. THAT BEING SO, THE ARGUMENT GOES, IT CANNOT PROPERLY BE FOUND BY THE BOARD THAT MEMBERS OF BOTH DISPUTING UNIONS WERE EMPLOYED BY THE RESPONDENT

AS REQUIRED UNDER THE ACT AND THE BOARD, THEREFORE, IS WITHOUT JURISDICTION.

7. IT IS OUR OPINION, HOWEVER, THAT THE BOARD SHOULD BE CONCERNED SOLELY WITH THE EXISTENCE OF THE REQUIRED EMPLOYMENT RELATIONSHIP AT THE RELEVANT TIME AND NOT WITH THE MOTIVE UNDERLYING THE ESTABLISHMENT OF THAT RELATIONSHIP.

8. THE BOARD THEREFORE FINDS ON THE BASIS OF ALL THE EVIDENCE THAT THE COMPLAINANT EMPLOYER HAD IN HIS EMPLOY AT THE RELEVANT TIME, WHICH WE FIND ON THE EVIDENCE TO BE JANUARY 8, 1970, MEMBERS OF BOTH DISPUTING UNIONS.

9. IN LIGHT OF THE FOREGOING, WE FIND THAT THE BOARD HAS JURISDICTION TO ENTERTAIN THE COMPLAINT.

10. THE HEARING OF THIS MATTER WILL THEREFORE CONTINUE ON APRIL 13, 14 AND 15, 1970 AS INDICATED TO THE PARTIES BY THE LETTER OF THE REGISTRAR DATED MARCH 2, 1970.

INDEXED ENDORSEMENT - SECTION 79(2)

17395-69-M: THE LONDON & DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U. (APPLICANT) v. THE CENTRE GREY GENERAL HOSPITAL, MARKDALE ONTARIO (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: MARCH 9, 1970.

1. THIS IS AN APPLICATION UNDER THE PROVISIONS OF SECTION 79(2) OF THE ACT WHEREIN THE APPLICANT REQUESTS THE BOARD TO DETERMINE WHETHER THE FOLLOWING PERSONS WERE "EMPLOYEES FOR PURPOSES OF COLLECTIVE BARGAINING UNDER THE ONTARIO LABOUR RELATIONS ACT".

MRS. RUTH RICHARDSON
MRS. KORLEEN HALBURT
MRS. ANNA HAINES
MRS. DOROTHY IRWIN
MRS. NADINE REID

2. HAVING REGARD TO THE REPRESENTATIONS OF THE RESPONDENT AS CONTAINED IN THE LETTER FROM THE RESPONDENT'S SOLICITOR DATED MARCH 4, 1970, THE BOARD DECLARES THAT MRS. RUTH RICHARDSON, MRS. KORLEEN HALBURT, MRS. ANNA HAINES, MRS. DOROTHY IRWIN AND MRS. NADINE REID ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

3. IT SHOULD BE RECOGNIZED, HOWEVER, THAT THE BOARD'S DECLARATION THAT THE ABOVE PERSONS ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES

OF THE ACT DOES NOT NECESSARILY DETERMINE THE ISSUE BETWEEN THE PARTIES AS TO WHETHER SUCH PERSONS ARE EMPLOYEES OF THE RESPONDENT COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES. THE ISSUE AS TO WHETHER THE ABOVE PERSONS ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES MUST BE DETERMINED PURSUANT TO THE PROVISIONS CONTAINED IN THE COLLECTIVE AGREEMENT. THIS DETERMINATION CANNOT BE MADE UNDER THE PROVISIONS OF SECTION 79(2) OF THE ACT.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

17225-69-R: SCARBOROUGH GENERAL HOSPITAL REGISTERED NURSING ASSISTANTS BARGAINING ASSOCIATION (APPLICANT) v. SCARBOROUGH GENERAL HOSPITAL (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND J.E.C. ROBINSON Q.C.

DECISION OF THE BOARD: MARCH 17, 1970. (FULLY REPORTED PAGE 1447, UPRA)

1. THE APPLICANT IN A LETTER DATED MARCH 9, 1970, HAS REQUESTED THE BOARD TO REHEAR THE APPLICATION FOR THE PURPOSE OF ENABLING THE APPLICANT TO ARGUE A POINT OF LAW IN CONNECTION WITH THE DECISION OF THE BOARD DATED MARCH 2, 1970 DISMISSING THE APPLICATION.

2. THE APPLICANT IN ITS REQUEST HAS NOT ALLEGED THAT NEW EVIDENCE HAS COME TO ITS ATTENTION WHICH WAS NOT AVAILABLE TO IT AT THE HEARING. IN ADDITION, THE APPLICANT HAS NOT ALLEGED THAT IT WAS PREVENTED FROM ARGUING THE POINT OF LAW BEFORE THE BOARD WHICH IT NOW RAISES.

3. AS WAS STATED BY THE BOARD IN THE ROBERT MCALPINE LTD. CASE, BOARD FILE NO. 12468-66-U:

> "WE DO NOT BELIEVE THAT THE DISCRETIONARY POWER OF THE BOARD UNDER SECTION 79(1) OF THE ACT WAS INTENDED TO BE EXERCISED FOR THE PURPOSE OF PERMITTING A PARTY TO REPAIR THE DEFICIENCIES OF HIS CASE AS POINTED OUT IN A DECISION OF THE BOARD. IF SUCH WERE THE PRACTICE, PROCEEDINGS WOULD BE INTERMINABLE AND DECISIONS INCONCLUSIVE."

4. IN THE LIGHT OF THE FOREGOING, THE BOARD DOES NOT CONSIDER IT ADVISABLE TO GRANT THE APPLICANT'S REQUEST. ACCORDINGLY, THE BOARD CONFIRMS ITS DECISION DATED MARCH 2, 1970, AND DENIES THE REQUEST OF THE APPLICANT.

17227-69-R: Draftsmen's Association of Ontario, Local 164, American Federation of Technical Engineers, A.F.L.-C.I.O., C.L.C. (Applicant) v. JOHN T. HEPBURN, LIMITED (Respondent).

BEFORE: J. H. Brown, Q.C., Alternate Chairman, and Board Members E. Boyer and R. W. Teagle.

DECISION OF THE BOARD: March 5, 1970.

1. By letter dated February 27, 1970, the representative of the applicant requested that the Board reconsider its decision in this matter dated February 23, 1970. More specifically, the applicant is requesting that the Board extend the terminal date fixed in the instant application, having regard to the judgment of the Supreme Court of Canada in the Metropolitan Life Insurance Company Case, 70 CLLC ¶14,008, and the Board's decision in Margaret's Fine Foods Limited Case, dated February 19, 1970, Board File No. 16950-69-R.

2. At the hearing of the instant application on February 4, 1970, the Board drew attention to the judgment of the Supreme Court of Canada in the Metropolitan Life Insurance Company Case (supra) which was pronounce on January 27, 1970 and invited the parties to make any representations the deemed appropriate in light of that judgement. Neither at the hearing nor during the subsequent nearly three week period prior to the issuing of the Board's deicision of February 23, 1970 did the representative of the applicant request the extension of the terminal date fixed in this application. In these circumstances, the Board is not prepared to grant the relief which the applicant is seeking.

3. Alternatively, the representative of the applicant, in his letter of February 27th, requested that the applicant be permitted to file another application for certification for a unit of employees of the respon dent. A new application, in fact, was enclosed with the applicant's request for reconsideration. In its decision of February 23, 1970, the Board placed no bar on the making of a subsequent application.

4. The Board accordingly directs that the Registrar process the new application filed by the applicant.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION - SECTION 65

16443-69-U: J. P. Sullivan (Complainant) v. DUPLATE CANADA LTD. (Respondent

BEFORE: J. H. Brown, Q.C., Alternate Chairman, and Board Members E. Boyer and F. W. Murray.

APPEARANCES AT THE HEARING: J. P. SULLIVAN FOR THE COMPLAINANT, J. W. HEALY, Q.C., B. M. ANDERSON, G. A. HINES AND G. E. WILLIAMS FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 26, 1970.

1. THE COMPLAINANT MADE A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT ALLEGING THAT HE HAD BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 48 AND 50 OF THE ACT.

2. THE BOARD AUTHORIZED A FIELD OFFICER TO INQUIRE INTO THAT COMPLAINT. THE FIELD OFFICER AFTER CONSULTING WITH THE PARTIES FILED HIS REPORT. THE BOARD, HAVING CONSIDERED THE ALLEGATIONS CONTAINED IN THE COMPLAINT AND THE ALLEGATIONS OF FACT CONTAINED IN A LETTER FROM THE COMPLAINANT DATED JULY 16, 1969, AS WELL AS THE MATERIAL FILED WITH THE FIELD OFFICER BY THE RESPONDENT, DISMISSED THE COMPLAINT BY A DECISION DATED AUGUST 21, 1969. BRIEFLY, THE BOARD DISMISSED THE COMPLAINT ON THE FOLLOWING GROUNDS; (1) THE ALLEGATIONS OF FACT SET OUT IN THE COMPLAINT AND IN THE COMPLAINANT'S STATEMENT TO THE FIELD OFFICER (WHICH IS CONTAINED IN HIS LETTER OF JULY 16, 1969) DID NOT ESTABLISH A PRIMA FACIE CASE THAT THE COMPLAINANT HAD BEEN DEALT WITH CONTRARY TO SECTIONS 48 AND 50 OF THE ACT. (2) A REMEDY WAS AVAILABLE TO THE COMPLAINANT BY WAY OF A GRIEVANCE AND ARBITRATION PROCEDURE UNDER A COLLECTIVE AGREEMENT. AS WAS NOTED IN ITS DECISION OF AUGUST 21, 1969, THE BOARD'S CONSISTENT PRACTICE HAS BEEN NOT TO ENTERTAIN A COMPLAINT UNDER SECTION 65 IN THE LATTER CIRCUMSTANCE, UNLESS THERE ARE EXCEPTIONAL CIRCUMSTANCES. THE BOARD IN THE INSTANT COMPLAINT FOUND NO EXCEPTIONAL CIRCUMSTANCES.

3. BY LETTER DATED AUGUST 25, 1969, THE COMPLAINANT REQUESTED THAT THE BOARD RELEASE TO HIM A COPY OF THE FIELD OFFICER'S REPORT, PURSUANT TO SECTION 31 OF THE BOARD'S RULES OF PROCEDURE. BY LETTER DATED SEPTEMBER 3, 1969, ON INSTRUCTIONS FROM THE BOARD, THE REGISTRAR ADVISED THE COMPLAINANT THAT IN DEALING WITH HIS COMPLAINT, THE BOARD FOLLOWED ITS USUAL PRACTICE AND PROCEDURE UNDER SECTION 65(2) AND (3) OF THE ACT. THOSE SUBSECTIONS PROVIDE FOR THE APPOINTMENT OF A FIELD OFFICER WHO REPORTS BACK TO THE BOARD. THE COMPLAINANT WAS ADVISED THAT THE REPORT OF THE FIELD OFFICER WAS ONLY MADE AVAILABLE TO THE DIVISION OF THE BOARD ASSIGNED TO DEAL WITH THE COMPLAINT AND A COPY IS NOT PROVIDED TO THE PARTIES TO A COMPLAINT UNDER SECTION 65 OF THE ACT. IT WAS POINTED OUT TO THE COMPLAINANT THAT SECTION 31 OF THE BOARD'S RULES OF PROCEDURE WAS ONLY APPLICABLE IN THE EVENT THAT THE BOARD AUTHORIZES A CHAIRMAN TO INQUIRE INTO A COMPLAINT MADE UNDER SECTION 65, WHICH IS PROVIDED FOR IN SECTION 77(2)(H) OF THE ACT. THE COMPLAINANT WAS FURTHER ADVISED THAT THE BOARD DID NOT PROCEED UNDER THIS SECTION AND ACCORDINGLY, HE WOULD NOT BE RECEIVING A REPORT IN FORM 36.

4. By letter dated February 13, 1970, the complainant applied to the Board for reconsideration of both its refusal to release the Report of the Field Officer and the dismissal of his complaint. The Board accordingly listed the case for hearing on March 20, 1970 for the purpose of entertaining the representations of the parties with respect to the complainant's request for the release of the Field Officer's Report and to entertain the representations of the parties with respect to the request of the complainant that the Board reconsider its decision of August 21, 1969.

5. At the hearing on March 20th, the Board initially entertained the representations of the complainant and counsel for the respondent with respect to the release of the Field Officer's Report. As has been stated, the Board dealt with the complaint under section 65(2) and (3) of the Act and following its general practice pursuant to section 83 of the Act did not release the Field Officer's Report to the parties. Notwithstanding that the Board did not deal with the complaint under section 77(2)(h) of the Act, there is some doubt as to the interpretation that should be placed on section 31 of the Board's Rules of Procedure. For the latter reasons and in the special circumstances of the instant complaint, the Board ruled that the complainant would be provided with a copy of the Field Officer's Report.

6. The complainant was thereupon, at the hearing, provided with copies of the material submitted to the Field Officer by the respondent. More specifically, this consisted of a letter dated August 11, 1969 addressed to the Field Officer and signed by the Director of Personnel and Industrial Relations of the respondent, and two inter-office memorandums of the respondent, one dated April 14, 1969 and the other dated June 11, 1969. The complainant already have knowledge of the other material contained in the Field Officer's Report. This consisted of two documents. One is a four-page statement prepared by the Field Officer based on an interview with the complainant, outlining the allegations of the complainant, which was provided to the complainant. The second document is a letter dated July 16, 1969, written by the complainant himself to the Board setting out, in detail, the allegations upon which he relied in support of his complaint. The complainant was afforded ample time to study the material given to him at the hearing.

7. The Board thereupon called upon the complainant for his representations as to why the Board should reconsider its decision of August 21, 1969 in light of all of the material contained in the Field Officer's Report, which, as has been stated, was made available to the complainant. The complainant's attention was specifically directed to the two grounds upon which the Board had dismissed the complaint which are set out in paragraph 2 above. The complainant was given every opportunity to made any representations which he deemed appropriate.

THE COMPLAINANT, HOWEVER, FAILED TO MAKE ANY REPRESENTATION RELEVANT TO THE ISSUE OR WHICH IN ANY WAY SATISFIED THE BOARD THAT THERE WAS ANY REASON FOR IT TO RECONSIDER ITS DECISION OF AUGUST 21, 1969.

8. THE REQUEST OF THE COMPLAINANT FOR RECONSIDERATION OF HIS COMPLAINT ACCORDINGLY IS DENIED.

STATISTICAL TABLES - FISCAL YEAR 1969-70

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	Number Filed		
	Fiscal Year 1969-70	Fiscal Year 1969-70	1968-69
I. Certification	269	1049	1037
II. Declaration Terminating Bargaining Rights	25	89	64
III. Declaration of Successor Status	5	20	41
IV. Declaration that Strike Unlawful	19	57	36
V. Declaration that Lock-out Unlawful	2	6	7
VI. Consent to Prosecute	46	145	103
VII. Complaint of Unfair Practice in Employment (Section 65)	43	173	184
VIII. Miscellaneous	27	89	94
TOTAL	436	1628	1566

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	Number		
	Fiscal Year 1969-70	Fiscal Year 1969-70	1968-69
Hearings and Continuation of Hearings by the Board	315	1236	1052

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY MAJOR TYPES

	Number Disposed of		
	Fiscal Year 1969-70	Fiscal Year 1969-70	1968-69
I. Certification	216	999	1032
II. Declaration Terminating Bargaining Rights	23	83	70
III. Declaration of Successor Status	4	32	31
IV. Declaration that Strike Unlawful	14	56	38
V. Declaration that Lock-out Unlawful	1	6	6
VI. Consent to Prosecute	35	137	103
VII. Complaint of Unfair Practice in Employment (Section 65)	38	179	190
VIII. Miscellaneous	24	105	73
TOTAL	355	1597	1543

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY BY TYPE AND DISPOSITION

	Number of Applications			Number of Employees*		
	Fiscal Year 1969-70	1969-70	1968-69	Fiscal Year 1969-70	1969-70	1968-69
I. Certification						
Granted	137	675	696	5150	21984	23046
Dismissed	62	210	231	5773	11652	8927
Withdrawn	17	114	105	636	2136	1991
TOTAL	216	999	1032	11559	35772	33964
II. Termination of Bargaining Rights						
Granted	11	37	36	522	1439	1327
Dismissed	11	45	25	320	591	635
Withdrawn	1	1	9	50	68	212
TOTAL	23	83	70	892	2098	2174

*These figures refer to the number of employees directly affected and are ba
on the number of employees in the bargaining units at the time the applicat
for certification were filed with the Board. Totals for applications dismi
and withdrawn are approximate.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

	Fiscal Year 1969-70	Fiscal Year 1969-70	1968-69
III. Declaration that Strike Unlawful			
Granted	1	2	3
Dismissed	-	7	2
Withdrawn	13	47	33
TOTAL	14	56	38
IV. Declaration that Lockout Unlawful			
Granted	-	1	-
Dismissed	1	4	3
Withdrawn	-	1	3
TOTAL	1	6	6
V. Consent to Prosecute			
Granted	9	46	28
Dismissed	1	12	13
Withdrawn	25	79	62
TOTAL	35	137	103
VI. Complaint of Unfair Practice in Employment (Section 65)			
Granted	4	35	12
Dismissed	10	38	46
Withdrawn	24	106	132
TOTAL	38	179	190

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY BY THE ONTARIO LABOUR RELATIONS BOARD

	Number of Votes		
	Fiscal Year 1969-70	Fiscal Year 1969-70	1968-6
Certification after Vote*			
Pre-hearing Vote	6	24	17
Post-hearing Vote	13	36	45
Ballots not Counted	-	-	-
Dismissed after Vote			
Pre-hearing Vote	6	15	8
Post-hearing Vote	15	52	39
Ballots not Counted	-	1	1
TOTAL	40	128	110

*Includes applicant-intervener applications in which both applicant and intervener apply for a new unit and either applicant or intervener is certified.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

	Number of Votes		
	Fiscal Year 1969-70	Fiscal Year 1969-70	1968-69
*Respondent Union Successful	-	5	7
Respondent Union Unsuccessful	5	16	28
TOTAL	5	21	35

*In Termination Proceedings where a vote is taken the applicant is a group of employees or the employer; the incumbent union is thus the respondent.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING APRIL 1970

BARGAINING AGENTS CERTIFIED DURING APRIL

No Vote Conducted

17163-69-R: International Union of Operating Engineers, Local 793 (Applicant) v. Bot Construction (Canada) Limited (Respondent).

Unit: "all employees of the respondent within the radius of 35 miles from the City of Sudbury Federal Building engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen, persons above the rank of non-working foreman and employees covered by the subsisting collective agreement between the respondent and T.E.L. Council of Trade Unions effective March 1, 1969." (6 employees in the unit).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES AND TO THE CIRCUMSTANCES OF THIS CASE)

(THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE BORGIA DEVELOPMENT PROGRAMME IS HIGHWAY CONSTRUCTION AND IS COVERED BY THE SAID COLLECTIVE AGREEMENT).

17176-69-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local Union 91, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Bill's Gulf Station (Respondent).

Unit: "all employees of the respondent at Brockville, save and except foremen, persons above the rank of foreman, office and sales staff." (2 employees in the unit).

17178-69-R: Teamsters, Chauffeurs, Warehousemen, and Helpers Local Union 91, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Braden Ford Sales Ltd. (Respondent).

Unit: "all employees of the respondent at Brockville, save and except foremen, persons above the rank of foreman, office and sales staff." (13 employees in the unit).

17180-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 91, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. ZELLER'S LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BROCKVILLE, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE AND SALES STAFF."

(FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE GAS PUMP ATTENDANTS ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT).

(SEE INDEXED ENDORSEMENT PAGE 37).

17190-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 91, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. MOTORLAND CHRYSLER PLYMOUTH LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (13 EMPLOYEES IN THE UNIT).

17192-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 91, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. ELLIOTT MOTORS (BELLEVILLE) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SERVICE SALES CLERKS, PARTS SALES CLERKS, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR LESS THAN 24 HOURS PER WEEK." (38 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17223-69-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 81 (APPLICANT) v. COCHRANE DUNLOP HARDWARE LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT THE CITY OF THUNDER BAY, SAVE AND EXCEPT OFFICE MANAGER AND PERSONS ABOVE THE RANK OF OFFICE MANAGER, SALES STAFF, CHIEF PRICER, CONFIDENTIAL SECRETARY TO THE MANAGER, PERSONS EMPLOYED ON A TEMPORARY OR CASUAL BASIS, MANAGEMENT TRAINEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING A SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE WORK-STUDY PROGRAMME." (14 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17233-69-R: International Union of United Brewery, Flour, Cereal Soft Drink and Distillery Workers of America, Local 325 Etobicoke Ontario and Vicinity (Applicant) v. Barton Distilling (Canada) Limited (Respondent) v. Distillery, Rectifying, Wine and Allied Workers' International Union of America, AFL-CIO-CLC (Intervener #1) v. Canadian Union of Operating Engineers, on behalf of its Local 104 (Intervener #2).

Unit: "all employees of the respondent at Collingwood, save and except foremen, persons above the rank of foreman, office and sales staff, students employed during the school vacation period, and persons covered by the collective agreement between the respondent and The Canadian Union of Operating Engineers which was entered into on the 15th day of November 1968." (20 employees in the unit).

17236-69-R: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L. - C.I.O. - C.L.C. (Applicant) v. The Corporation of the City of London Dr. John Dearness Home for Elder Citizens (Respondent).

Unit: "all office employees of the respondent employed at the Dr. John Dearness Home for Elder Citizens, save and except the assistant administrator, persons above the rank of assistant administrator, persons regularly employed for not more than 24 hours per week, and persons in the employ of the respondent for whom the applicant holds bargaining rights by virtue of a collective agreement between the parties effective from January 1, 1968 to December 31, 1969." (2 employees in the unit).

17241-69-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the Township of Markham (Respondent).

Unit: "all employees of the respondent, in the Township of Markham, save and except Waterworks Superintendent, Assistant Roads Superintendent, Fleet Superintendent, persons above the ranks of Waterworks Superintendent, Assistant Roads Superintendent and Fleet Superintendent, office, clerical and technical staff." (38 employees in the unit).

(Having regard to the agreement of the parties).

17281-69-R: United Steelworkers of America (Applicant) v. Exothermic Company of Canada Limited (Respondent).

Unit: "all employees of the respondent at Mount Hope, save and except foremen, persons above the rank of foreman, office and sales staff, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week." (15 employees in the unit).

17299-69-R: Canadian Union of Construction Workers (Applicant) v. Lancia Tile Company (Respondent) v. Local No. 31 Marble Masons, Tile Setters and Terrazzo Mechanics affiliated with the Bricklayers, Masons and Plasterers International Union of America (Intervener).

Unit: "all tile setter mechanics in the employ of the respondent in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

(HAVING REGARD TO THE NATURE OF THE RESPONDENT"S OPERATIONS AND THE WORK PERFORMED BY THE PERSONS IN ITS EMPLOY).

(SEE INDEXED ENDORSEMENT PAGE 49).

17300-69-R: Canadian Union of Construction Workers (Applicant) v. New Way Terrazzo Limited (Respondent) v. Local No. 31 Marble Masons, Tile Setters and Terrazzo Mechanics affiliated with the Bricklayers, Masons and Plasterers International Union of America (Intervener).

Unit: "all tile setter and terrazzo mechanics and labourers in the employ of the respondent in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

(HAVING REGARD TO THE NATURE OF THE RESPONDENT'S OPERATIONS AND THE WORK PERFORMED BY THE PERSONS IN ITS EMPLOY).

(FOR PURPOSES OF CLARITY, THE BOARD DECLARED THAT ALL HELPERS AND GRINDERS FALL WITHIN THE CLASSIFICATION OF LABOURER).

17323-69-R: Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. M. Loeb (London) Limited, trading as Shoppers City licensed operators of K Mart Foods (Respondent) v. Group of Employees (Objectors).

Unit: "all Meat Department employees of the respondent at its retail stores at Chatham, save and except persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (9 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 55).

17341-69-R: Canadian Union of Construction Workers (Applicant) v. Antonio Santarossa Tile Co. (Respondent) v. Local No. 31 Marble Masons, File Setters and Terrazzo Mechanics affiliated with The Bricklayers, Masons and Plasterers International Union of America (Party added by the Board).

Unit: "all tile setters and labourers in the employ of the respondent in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton inthe County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

17355-69-R: Retail and Food Employees Local Union 175, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Chatham I.G.A. Foodliner (Operated by M. Loeb (London) Limited) (Respondent).

Unit: "all employees of the respondent employed at its retail stores at Chatham, who are regularly employed for not more than 24 hours per week and students employed during off school hours and during the school vacation period." (10 employees in the unit).

(HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

17361-69-R: Retail Clerks International Association (Applicant) v. O. K. Economy Food Warehouse (Respondent) v. Group of Employees (Objectors).

Unit #1: "all employees of the respondent at its retail store in Orangeville, save and except assistant store manager, persons above the rank of assistant store manager, office staff, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week." (20 employees in the unit).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Unit #2: "all employees of the respondent at its retail store in Orangeville regularly employed for not more than 24 hours per week and students employed during the summer vacation period, save and except assistant store manager and office staff." (7 employees in the unit).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17363-69-R: Office and Professional Employees International Union Local 81 (Applicant) v. Cochrane Dunlop Hardware Limited (Respondent).

Unit: "all employees of the respondent at its wholesale warehouse at Thunder Bay save and except foremen, persons above the rank of foreman, office staff, outside sales staff, persons employed on a temporary or casual basis, management trainees, persons regularly employed for not

MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE WORK-STUDY PROGRAMME." (10 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17386-69-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. DISTRICT OF MANITOULIN HOME FOR THE AGED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LITTLE CURRENT, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, THE ASSISTANT ADMINISTRATOR, SUPERVISORS, AND PERSONS ABOVE THE RANK OF ASSISTANT ADMINISTRATOR AND SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (47 EMPLOYEES IN THE UNIT).

(THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE ADJUVANT AND CRAFT SUPERVISOR ARE EXCLUDED FROM THE BARGAINING UNIT).

(THE BOARD ALSO NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT CHARGE NURSES AND THE ASSISTANT SUPERVISORS DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND ARE INCLUDED IN THE BARGAINING UNIT AND THAT THE PERSONS CLASSIFIED BY THE RESPONDENT AS SECURITY ARE INCLUDED IN THE BARGAINING UNIT BECAUSE THEY ARE NOT GUARDS WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

(SEE INDEXED ENDORSEMENT PAGE 56).

17409-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT) V. THE DOCTORS HOSPITAL (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AT METROPOLITAN TORONTO, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (6 EMPLOYEES IN THE UNIT).

17413-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. FROST STEEL AND WIRE COMPANY, LIMITED (RESPONDENT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON-WORKERS, LOCAL 721 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE INSTALLATION AND/OR ERECTION OF FENCES, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (23 EMPLOYEES IN THE UNIT).

17425-69-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. A. Earle Hodge Company Limited (Respondent).

Unit: "all employees of the respondent at its retail stores at Onaping, save and except store managers and persons above the rank of store manager." (4 employees in the unit).

17451-69-R: International Printing Pressmen and Assistants Union of North America (Applicant) v. Rolph-Clark-Stone Limited (Respondent).

Unit: "all employees of the respondent in Smiths Falls, save and except foremen, persons above the rank of foreman and office and sales staff." (47 employees in the unit).

17459-69-R: Retail Clerks International Association (Applicant) v. Hi Way Market Limited (Respondent).

Unit: "all employees of the respondent at Kitchener, save and except department managers, buyers, persons above the rank of department manager and buyer, persons above the rank of department manager and buyer, office and sales staff, security staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (83 employees in the unit).

(having regard to the agreement of the parties).

(for the purposes of clarity the Board finds that those persons who may be referred to as wholesale sales staff are not included in the bargaining unit).

17471-69-R: Draftsmen's Association of Ontario, Local 164, American Federation of Technical Engineers, A.F.L.-C.I.O., C.L.C. (Applicant) v. John T. Hepburn, Limited (Respondent).

Unit: "all draftsmen employed by the respondent in the drafting office at 1789 St. Clair Avenue West, Toronto, save and except supervisor, persons above the rank of supervisor, draftsmen working in a non-drafting capacity, students employed for the school vacation period or on a cooperative training program, and persons regularly employed for not more than 24 hours per week." (7 employees in the unit).

(having regard to the agreement of the parties).

17473-69-R: Retail and Food Employees Local Union 175, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. The Great Atlantic and Pacific Tea Company, Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS RETAIL STORES AT LONDON REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF-SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT ASSISTANT STORE MANAGERS AND PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER." (173 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17477-69-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 343 (APPLICANT) v. STELCO EMPLOYEES' (HILTON WORKS) CREDIT UNION LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS EMPLOYED IN A CONFIDENTIAL CAPACITY." (21 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17478-69-R: DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F. OF L. - C.I.O., C.L.C. (APPLICANT) v. UNIVERSAL DRAFTING CO. LIMITED (RESPONDENT).

UNIT: "ALL DRAFTSMEN EMPLOYED BY THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS AND THOSE ABOVE THE RANK OF SUPERVISOR." (10 EMPLOYEES IN THE UNIT).

17487-69-R: TORONTO PRINTING PRESSMEN & ASSISTANTS' UNION NO. 10 (APPLICANT) v. THE ARTHUR PRESS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL PRESSMEN, ASSISTANT PRESSMEN, OFFSET PREPARATORY WORKERS, AND THEIR APPRENTICES EMPLOYED BY THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

17492-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. PERTH DISTRICT HEALTH UNIT (RESPONDENT) v. NURSES' ASSOCIATION PERTH COUNTY HEALTH UNIT (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PERTH COUNTY EMPLOYED IN ITS HEALTH UNIT SAVE AND EXCEPT CHIEF HEALTH INSPECTOR, PERSONS ABOVE THE RANK OF CHIEF HEALTH INSPECTOR, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE NURSES' ASSOCIATION PERTH COUNTY HEALTH UNIT." (11 EMPLOYEES IN THE UNIT).

17493-69-R: OIL & GAS BURNER TECHNICIANS UNION, LOCAL 1267 (APPLICANT) v. PRE-FAB CUSHIONING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (44 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 59).

17494-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. MODULCON LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (60 EMPLOYEES IN THE UNIT).

17496-69-R: INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, DRYDEN LOCAL 105, AFL-CIO/CLC (APPLICANT) v. CHUKUNI LUMBER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT EAR FALLS, SAVE AND EXCEPT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF SUPERINTENDENT, AND OFFICE STAFF." (8 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 63).

17497-69-R: BOOT AND SHOE WORKERS' UNION AFFILIATED WITH C.L.C.-A.F.L.-C.I.O. (APPLICANT) v. ELEGANT SHOE CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN, FORELADY, OFFICE AND SALES STAFF." (19 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17499-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES EMPLOYED BY THE RESPONDENT IN ITS GROCERY DIVISION WAREHOUSE AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND BAKERY CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 264 COVERING EMPLOYEES OF THE RESPONDENT'S NATIONAL PRODUCE DIVISION." (230 EMPLOYEES IN THE UNIT).

17501-69-R: International Chemical Workers Union (Applicant) v. Canada and Dominion Sugar Company Limited (Respondent).

Unit: "all warehousemen employed by the respondent at its Metropolitan Toronto warehouse, save and except foremen, persons above the rank of foreman, and office staff." (30 employees in the unit).

(having regard to the agreement of the parties).

17502-69-R: Canadian Union of Public Employees (Applicant) v. Corporation of the Town of Essex (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent, save and except foremen and persons above the rank of foreman." (9 employees in the unit).

(having regard to the agreement of the parties).

17503-69-R: Hotel and Restaurant Employees and Bartenders' International Union, Restaurant, Cafeteria and Tavern Employees Union, Local 254 (Applicant) v. Canteen of Canada Limited (Walfoods Limited) (Respondent).

Unit: "all employees of the respondent employed at Honeywell Controls Limited plant, 740 Ellesmere Road, Scarborough, save and except assistant manager, persons above the rank of assistant manager, office staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (15 employees in the unit).

(the Board noted the agreement of the parties that the person classified by the respondent as chef is included in the bargaining unit).

17509-69-R: Teamsters' Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers (Applicant) v. Moto-Mix Concrete Limited (Respondent).

Unit #1: "all employees of the respondent at Ottawa, save and except foremen, persons above the rank of foreman, office and sales staff, and persons regularly employed for not more than 24 hours per week." (8 employees in the unit).

Unit #2: "all employees of the respondent at Ottawa regularly employed for not more than 24 hours per week, save and except foremen, persons above the rank of foreman, office and sales staff." (5 employees in the unit).

17513-69-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Steed and Evans, a division of Steed and Evans Limited (Respondent) v. Labourers International Union of North America Local 837 (Intervener).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent within The Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (14 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 64).

17514-69-R: United Brotherhood of Carpenters and Joiners of America Local 1988 (Applicant) v. Polaris Steel Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Lanark, the Townships of North Crosby, South Crosby, South Burgess, Bastard, South Elmsley and Kitley in the County of Leeds and the Townships of Wolford, Oxford and South Gower in the County of Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

17516-69-R: Operative Plasterers' & Cement Masons' International Association of the United States & Canada, Local 124 (Applicant) v. Lagendyk & Company Limited (Respondent).

Unit: "all cement masons and cement masons' apprentices in the employ of the respondent in The Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

17519-69-R: Milk & Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Weston Bakeries Limited (Respondent).

Unit: "all employees at Weston Bakeries Limited at 500 Keele Street, Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, students employed during the school vacation period, persons regularly employed for not more than 24 hours per week, persons covered by an existing collective agreement between the applicant and the respondent dated February 3rd, 1969, and persons covered by a certificate #17040-69-R dated February 4th, 1970, issued by this Board." (9 employees in the unit).

(HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES AND HAVING REGARD TO THE PREVIOUS CERTIFICATE WHICH WAS ISSUED BY THIS BOARD TO BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264, CONCERNING THE EMPLOYEES OF THE RESPONDENT AT ITS DUPONT STREET PLANT AT

TORONTO (BOARD FILE NO. 17040-69-R DATED FEBRUARY 4TH, 1970), AND IN THE SPECIAL CIRCUMSTANCES OF THIS CASE).

17521-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT) v. METROPOLITAN LIFE INSURANCE COMPANY (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS BUILDING DIVISION AT OTTAWA ENGAGED IN BUILDING MAINTENANCE AND CLEANING OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (26 EMPLOYEES IN THE UNIT).

17522-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT) v. ST. FRANCIS GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE POWER HOUSE OF THE RESPONDENT AT SMITHS FALLS, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

17528-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 91, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. SYLVESTER MACDONALD CARRYING ON BUSINESS AS UPTOWN MOTOR SALES (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES AT UPTOWN MOTOR SALES AT CORNWALL, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 67).

17529-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 91, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. ARMATAGE MOTORS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RENFREW, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 69).

17534-69-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 91, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Brookshell Pontiac Buick Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Cornwall, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (21 employees in the unit).

17535-69-R: Warehousemen and Miscellaneous Drivers Union, Local 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Canadian Laboratory Supplies Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, service staff, office and sales staff and persons regularly employed for not more than 24 hours per week." (32 employees in the unit).

17536-69-R: Retail and Food Employees Local Union 175, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. The Great Atlantic and Pacific Tea Company Limited (Respondent).

Unit: "all employees of the respondent at its retail stores at Oakville, regularly employed for not more than 24 hours per week and students employed in off school hours and during the school vacation period." (16 employees in the unit).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17541-69-R: United Brick and Clay Workers of America District Council No. 7 (Applicant) v. Dufferin Precast Company, A Division of Dufferin Materials & Construction Ltd. (Respondent) v. Labourers' International Union of North America, Local 506 (Intervener) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Vaughan Township in the County of York, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (10 employees in the unit).

17543-69-R: Service Employees Union, Local 210 (Applicant) v. Corporation County of Bruce (Respondent) v. Group of Employees (Objectors).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE GATEWAY HAVEN, HOME FOR THE AGED AT WIARTON, SAVE AND EXCEPT REGISTERED NURSES, OFFICE STAFF, SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (41 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17544- 69-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. LUCIER ELECTRIC LTD. (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE PRINCIPLE ENUNCIATED IN THE WINTER & SON CASE, OLRB, M.R., FEB. 1967, P. 889 AND TO SECTION 6(1) OF THE LABOUR RELATIONS ACT).

17545-69-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. ARROW ELECTRIC OWNED AND OPERATED BY ROY HUNTER ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

17546-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. BRENDAN CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN AND OUT OF SUDBURY, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17547-69-R: UNITED GARMENT WORKERS OF AMERICA (APPLICANT) V. RAJAC LEATHER AND SPORTSWEAR LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND THOSE ABOVE THE RANK OF FOREMAN." (29 EMPLOYEES IN THE UNIT).

17550-69-R: BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL #10 (APPLICANT) V. C. A. JOHANNSEN & SONS LTD. (RESPONDENT).

Unit: "all bricklayers and bricklayers' apprentices in the employ of the respondent in the Counties of Lennox and Addington, Frontenac and the Townships of Rear of Leeds and Lansdowne, Front of Leeds and Lansdowne, Rear of Yonge and Escott, Front of Yonge and Front of Escott in the County of Leeds, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

17551-69-R: Canadian Union of Public Employees (Applicant) v. Metropolitan Separate School Board (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto engaged in Maintenance, services and plant operations, save and except supervisors, persons above the rank of supervisor, office staff and students employed during the school vacation period." (453 employees in the unit).

17552-69-R: Dental Technicians Union, Local 43, International Jewelry Workers Union (Applicant) v. Nobilium Processors Limited (Respondent).

Unit: "all dental technicians in the employ of the respondent at Metropolitan Toronto, save and except foremen and persons above the rank of foreman." (23 employees in the unit).

17553-69-R: International Association of Machinists and Aerospace Workers (Applicant) v. G & H Steel Service of Canada Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff and employees covered by subsisting collective agreements between the respondent and (1) The International Association of Bridge, Structural and Ornamental Ironworkers, Local Union Number 721, dated October 13, 1967, (2) The International Union of Operating Engineers, Local Union #793, dated June 4, 1969, and (3) Teamsters Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers, dated April 11, 1968." (37 employees in the Unit).

17554-69-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. O. S. F. Industries Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in The Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

17555-69-R: Labourers' International Union of North America, Local 183 (Applicant) v. Saga Investments (Respondent).

Unit: "all construction labourers in the employ of the respondent within Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen, persons above the rank of non-working foreman and construction labourers engaged in building projects." (23 employees in the unit).

17557-69-R: United Brotherhood of Carpenters & Joiners of America, Local Union #249 (Applicant) v. J and X Builders, Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Lennox and Addington, Frontenac and the Townships of Rear of Leeds and Lansdowne, Front of Leeds and Lansdowne, Rear of Yonge and Escott, Front of Yonge and Front of Escott in the County of Leeds, save and except non-working foremen and persons above the rank of non-working foreman." (10 employees in the unit).

17563-69-R: Christian Trade Unions of Canada (Local 6) (Applicant) v. C. Boonstra Heating Ltd. (Respondent) v. Sheet Metal Workers' International Association, Local 537 (Intervener).

Unit: "all sheet metal workers, sheet metal apprentices, and construction labourers in the employ of the respondent in the County of Wentworth and the Township of Nassagaweya and the Town of Burlington in the County of Halton, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

(having regard to the provisions of section 6(1) of the Labour Relations Act).

17567-69-R: International Union of Operating Engineers, Local 793 (Applicant) v. Saga Investment (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (10 employees in the unit).

17569-69-R: United Brotherhood of Carpenters & Joiners of America Local Union #1071 (Applicant) v. Lightfoot Construction Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Township of Hope in the County of Durham and the Townships of South Monaghan, Hamilton, Haldimand and Alnwick in the County of Northumberland, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

17570-69-R: International Union of Operating Engineers, Local 793 (Applicant) v. Marker Building Materials Cataraqui Limited (Respondent).

Unit: "all employees of the respondent in the Township of Kingston, save and except foremen, persons above the rank of foreman, office and sales staff." (14 employees in the unit).

17571-69-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. BURLINGTON-NELSON HOSPITAL (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN THE JOSEPH BRANT MEMORIAL HOSPITAL AT BURLINGTON, SAVE AND EXCEPT THE ADMINISTRATOR, THE ASSISTANT ADMINISTRATOR, THE ADMINISTRATIVE ASSISTANT, ACCOUNTANT, CLERK SUPERVISOR IN THE BUSINESS OFFICE, ADMITTING OFFICER, REGISTERED MEDICAL RECORD LIBRARIANS, EMPLOYEES IN THE PERSONNEL DEPARTMENT, ONE SECRETARY TO THE ADMINISTRATOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 20 HOURS PER WEEK, AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1065 AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772." (54 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17576-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. AKRON CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

17577-69-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) v. GRAY'S AMBULANCE SERVICE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TILLSONBURG, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17584-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. LANARK-LEEDS AND GRENVILLE COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (18 EMPLOYEES IN THE UNIT).

17588-70-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. BRYDON BRASS MANUFACTURING CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (25 EMPLOYEES IN THE UNIT).

17592-70-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493 (APPLICANT) V. CONITE LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

17597-70-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) V. C A. JOHANSON & SONS LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

17598-70-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 327 (APPLICANT) V. DRYDEN DISTRICT GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL AT DRYDEN, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 865 AND THE RESPONDENT." (72 EMPLOYEES IN THE UNIT).

(FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS).

17599-70-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 327 (APPLICANT) V. THE BOARD OF HEALTH NORTHWESTERN HEALTH UNIT (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICTS OF RAINY RIVER AND KENORA, SAVE AND EXCEPT REGISTERED GRADUATE NURSES AND PUBLIC HEALTH NURSES, CHIEF INSPECTOR, SUPERVISORS, PERSONS ABOVE THE RANKS OF CHIEF INSPECTOR AND SUPERVISOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (18 EMPLOYEES IN THE UNIT).

17601-70-R: Christian Labour Association of Canada (Applicant) v. Morris Electric (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the County of Ontario (except the Townships of Pickering, Rama, Mara and Thorah) and the County of Durham (except the Township of Hope), save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

17602-70-R: Retail Clerks International Association (Applicant) v. Chapples Stores Limited (Respondent).

Unit: "all employees of the respondent at Marathon, save and except branch store manager, persons above the rank of branch store manager, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (19 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 70).

17622-70-R: Chatham Construction Workers Association, Local No. 53, affiliated with the Christian Labour Association of Canada (Applicant) v. VanMinnen Construction Limited (Respondent).

Unit: "all construction labourers and all truck drivers in the employ of the respondent in the County of Lambton, and all employees of the respondent in the County of Lambton engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (10 employees in the unit).

17628-70-R: Canadian Construction, Building Maintenance and General Workers' Union (N.C.C.L.) (Applicant) v. L'Abbé Construction Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices, construction labourers and reinforcing rodmen in the employ of the respondent working at or out of Hearst, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in the unit).

17656-70-R: International Union of Operating Engineers, Local 793 (Applicant) v. Durie Mosaic & Marble Ltd. (Respondent).

Unit: "all employees of the respondent in The Regional Municipality of Ottawa-Carlteton and the United Counties of Prescott and Russell engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of

NON-WORKING FOREMAN AND PLANT AND YARD EMPLOYEES." (2 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

(FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT THE WORDS "SIMILAR EQUIPMENT" INCLUDES HOISTS).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

17141-69-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. THE TORONTO WESTERN HOSPITAL (RESPONDENT) v. SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204 (INTERVENER #1) v. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL AT METROPOLITAN TORONTO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, STUDENT NURSES, GRADUATE PHARMACISTS, STUDENT PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, ENGINEERS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND CANADIAN UNION OF OPERATING ENGINEERS. LOCAL 101." (769 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		585
NUMBER OF PERSONS WHO CAST BALLOTS	491	
NUMBER OF SPOILED BALLOTS	10	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	357	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #1	123	

17491-69-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) v. AUTOMATIC RADIO OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (65 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		66
NUMBER OF PERSONS WHO CAST BALLOTS	66	
BALLOTS SEGREGATED AND NOT COUNTED	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	42	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	20	

Applications Certified Subsequent to Post-Hearing Vote

15234-68-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. The Governors of the University of Toronto (Respondent) v. Connaught Medical Research Employees' Association (Intervener).

Unit: "all employees of the respondent employed at Connaught Medical Research Laboratories in Metropolitan Toronto and at Bolton, save and except Senior Supervisors and persons above the rank of Senior Supervisor, secretary to the Director, secretary to the Assistant Director in charge of operations, secretary to the Executive Administrator, secretary to the Financial Administrator, Chief Accountant, Accountant, secretary to the Chief Accountant, persons employed in the Personnel Office, the Payroll and Salary Administrator's Office, and the Data Processing Office, persons covered by existing collective agreements, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (572 employees in the unit).

Number of names of persons on revised voters' list		545
Number of persons who cast ballots	519	
Ballots segregated and not counted	1	
Number of spoiled ballots	9	
Number of ballots marked in favour of intervener	277	
Number of ballots marked against intervener	232	

16913-69-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local Union 141 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Matthews Group Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in its Aggregate Division employed at and working out of London, save and except foremen, persons above the rank of foreman, office and sales staff." (21 employees in the unit).

Number of names of persons on revised voters' list		19
Number of persons who cast ballots	19	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	13	
Number of ballots marked against applicant	5	

17211-69-R: Oil, Chemical & Atomic Workers' International Union (Applicant) v. Gulf Oil Canada Limited (Respondent) v. Gulf Oil Canada Limited, Clarkson Bargaining Association (Intervener).

Unit: "all employees of the Marketing Branch of the respondent at Clarkson, save amd except dispatcher, persons above the rank of dispatcher, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (116 employees in the unit).

Number of names of persons on revised voters' list		106
Number of persons who cast ballots	106	
Number of ballots marked in favour of applicant	58	
Number of ballots marked against applicant	48	

17290-69-R: United Steelworkers of America (Applicant) v. Canadian Westinghouse Company Limited (Respondent) v. International Union of Electrical Radio and Machine Workers AFL CIO-CLC (Intervener #1) v. United Electrical, Radio and Machine Workers of America (UE) (Intervener #2).

Unit: "all employees of the respondent at Galt, save and except foremen, persons above the rank of foreman, office and sales staff and students hired on a cooperative training basis with a school or university programme." (18 employees in the unit).

Number of names of persons on voters' list		20
Number of persons who cast ballots	19	
Number of ballots marked in favour of applicant	6	
Number of ballots marked in favour of intervener #2 United Electrical Radio and Machine Workers of America (UE)	13	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING APRIL

No Vote Conducted

17174-69-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local Union 91, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Alexander M. Stewart Limited (Respondent). (17 employees).

17175-69-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local Union 91 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Buffetts Garage (Respondent).

Unit: "all employees of the respondent at Brockville, save and except foremen, persons above the rank of foreman, office and sales staff." (3 employees in the unit).

17177-69-R: Teamsters, Chauffeurs, Warehousemen, and Helpers Local Union 91 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Rockway Pontiac Buick Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Brockville, save and except foremen, persons above the rank of foreman, office and sales staff." (12 employees in the unit).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17209-69-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Modern Cabinet Industries of Ottawa Limited (Respondent).

Unit: "all employees of the respondent employed at and working out of the Township of Nepean, save and except foremen, persons above the rank of foreman, office and sales staff." (9 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 39).

17340-69-R: Canadian Union of Construction Workers (Applicant) v. Paolini Tile & Marble Co. Ltd. (Respondent). (9 employees).

17349-69-R: International Union of Operating Engineers, Local 793 (Applicant) v. Pioneer Construction Co. (1967) Limited (Respondent) v. Northern Construction Union (Intervener). (91 employees).

17352-69-R: Labourers International Union of North America, Local 493 (Applicant) v. Pioneer Construction Co. (1967) Limited (Respondent) v. Northern Construction Union (Intervener). (26 employees).

17354-69-R: International Union of Operating Engineers, Local 793 (Applicant) v. C. H. Heist Industrial Services Canada Ltd. (Respondent) v. The Brotherhood of Painters, Decorators and Paperhangers, Local 1904 (Intervener) v. Group of Employees (Objectors). (no employees).

17507-69-R: The Separate School Secretaries Association - Welland County (Applicant) v. The Welland County Roman Catholic Separate School Board (Respondent). (38 employees).

17548-69-R: International Association of Bridge, Structural & Ornamental Iron Workers, Local 759 (Applicant) v. Newport Metal Industries Limited (Respondent) v. Sheet Metal Workers' International Association, Local Union 397 (Intervener). (1 employee).

17574-69-R: Local Union 221, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Viking Plumbing & Heating Ltd. (Respondent). (20 employees).

(SEE INDEXED ENDORSEMENT PAGE 70).

17575-69-R: The Bricklayers Masons & Plasterers International Union of America Local #30 (Applicant) v. Peacock Plastering Service Ltd. (Respondent) v. Trenton Construction Workers Association, Local No. 52, Affiliated with the Christian Labour Association of Canada (Intervener). (2 employees).

17615-70-R: United Brotherhood of Carpenters and Joiners of America Local #1988 (Applicant) v. CNIC Construction Ltd. (Respondent). (11 employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

17382-69-R: Local Union No. 304, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America AFL-CIO-CLC (Applicant) v. L. J. McGuinness and Co. Limited (Respondent) v. International Union of Operating Engineers, Local 796 (Intervener).

Voting Constituency: "all employees of the respondent at its plant in Metropolitan Toronto, save and except department heads, persons above the rank of department head, office and sales staff, chief engineer, stationary engineers and persons primarily engaged as their helpers employed in the boiler room, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (103 employees).

Number of names of persons on revised voters' list		90
Number of persons who cast ballots	90	
Number of ballots marked in favour or applicant	22	
Number of ballots marked against applicant	68	

17467-69-R: International Molders & Allied Workers Union (Applicant) v. Jas. H. Matthews and Co. (Canada) 1959 Ltd. (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MILTON SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		32
NUMBER OF PERSONS WHO CAST BALLOTS	32	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	27	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

17097-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. GEORGE LYONS MOTORS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NAPANEE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		4
NUMBER OF PERSONS WHO CAST BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4	

17181-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. BROCKVILLE MOTORS LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BROCKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		11
NUMBER OF PERSONS WHO CAST BALLOTS	11	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	8	

17292-69-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. The Great Atlantic and Pacific Tea Company, Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at its retail stores at Sudbury, save and except Assistant Store Managers and Head Cashiers, persons above the rank of Assistant Store Manager and Head Cashier, persons regularly employed for not more than 24 hours per week and students employed in off school hours and during the school vacation period." (43 employees in the unit).

Number of names of persons on revised voters' list		40
Number of persons who cast ballots	40	
Number of ballots marked in favour or applicant	13	
Number of ballots marked against applicant	27	

17328-69-R: International Union of Operating Engineers, Local 793 (Applicant) v. Ruscica Construction Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (32 employees in the unit).

Number of names of persons on revised voters' list		30
Number of persons who cast ballots	30	
Number of ballots marked in favour of applicant	9	
Number of ballots marked against applicant	21	

17453-69-R: Local Union 636 of the International Brotherhood of Electrical Workers A.F.L.-C.I.O.-C.L.C. (Applicant) v. Hydro Electric Commission of the Borough of East York (Respondent) v. Group of Employees (Objectors).

Unit: "all office employees of the respondent, save and except supervisors, persons above the rank of supervisor, one secretary to the manager, one secretary to the secretary-treasurer and persons covered by a subsisting collective agreement between the applicant and respondent." (17 employees in the unit).

Number of names of persons on voters' list		17
Number of persons who cast ballots	17	
Number of ballots marked in favour of applicant	5	
Number of ballots marked against applicant	12	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING APRIL

17305-69-R: Canadian Union of Construction Workers (Applicant) v. Boyd Leckie Ltd. (Respondent). (7 employees).

17538-69-R: Canadian Union of Operating Engineers (Applicant) v. Canadian Gypsum Company Limited (Respondent). (38 employees).

17565-69-R: Labourers International of North America Local 493 (Applicant) v. W. A. Stephenson Construction Co. Ltd. (Respondent). (3 employees).

17566-69-R: Labourers International Union of North America Local 493 (Applicant) v. The M. W. Kellogg Company (Division of Pullman Incor. Chimney Dept.) (Respondent). (7 employees).

17572-69-R: The Canadian Union of Public Employees (Applicant) v. Milton District Hospital (Respondent). (10 employees).

17578-69-R: International Association of Bridge, Structural & Ornamental Iron Workers, Local 759 (Applicant) v. Dominion Bridge Co. Ltd. (Respondent) v. International Union of Operating Engineers,Local 793 (Intervener). (3 employees).

17583-70-R: Canadian Union of Public Employees (Applicant) v. Hotel Dieu Hospital, St. Catharines (Respondent) v. Nurses' Association Hotel Dieu Hospital (Intervener #1) v. The Canadian Union of Operating Engineers (Intervener #2). (53 employees).

17593-70-R: Labourers' International Union of North America, Local 527 (Applicant) v. Real Binette Construction Limited (Respondent). (5 employees).

17605-70-R: International Union of Operating Engineers, Local 793 (Applicant) v. Dravo Construction Ltd. (Respondent). (2 employees).

17617-70-R: Teamsters' Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers (Applicant) v. S. McNally & Sons Ltd. (Respondent). (4 employees).

17653-70-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1747, affiliated with the Carpenters' District Council of Toronto and Vicinity (Applicant) v. Romanelli Lathing Ltd. (Respondent). (no employees).

17668-70-R: St. Lawrence College Faculty Association, Cornwall Campus (Applicant) v. Board of Governors of St. Lawrence College (Respondent). (40 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING APRIL

17370-69-R: Adrian C. Vanderlugt (Applicant) v. Local 242, Lithographers and Photoengravers International Union (Respondent) v. Standard Engravers Ltd. (Intervener). (GRANTED).

Unit: "all commercial artists, including but not limited to retouchers, paste-up artists, photostat operators, letterers and their apprentices of Standard Engravers Ltd. at Hamilton." (2 employees in the unit).

Number of names of persons on voters' list	2
Number of persons who cast ballots	2
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	2

17449-69-R: Mrs. Victoria Lynk & Mrs. Kitty Whitworth on behalf Registered Nursing Asst's (Applicants) v. Service Employees International - Loc. 204 (Respondent). (DISMISSED). (600 employees).

(Re: Toronto Western Hospital).

17457-69-R: Ovide Brunet - 400 Plouffe St. - Gatineau P.Q. (Applicant) v. Teamsters, Chauffeurs, Warehousemen, and Helpers - Local Union #91 (Respondent). (20 employees). (DISMISSED).

(Re: Francon Ltd.).

(SEE INDEXED ENDORSEMENT PAGE 71).

17480-69-R: Lay Employees of Scarborough Centenary Hospital Association (Applicant) v. The Canadian Union of General Employees (Respondent) v. Scarborough Centenary Hospital Association (Intervener). (430 employees). (DISMISSED).

17481-69-R: Walter Schimmens (Applicant) v. United Steelworkers of America (Respondent). (3 employees). (DISMISSED).

(Re: Canadian Landis Machine Co., Ltd.).

17558-69-R: George F. Wayland (Applicant) v. The Office & Professional Employees International Union (Respondent) v. The Hydro-Electric Power Commission of Ontario (Intervener). (310 employees). (WITHDRAWN).

(SEE INDEXED ENDORSEMENT PAGE 74).

17616-70-R: Willibald Hackl (Applicant) v. Local Union 1669 United Brotherhood of Carpenters & Joiners of America (Respondent). (1 employee) (DISMISSED).

(Re: Abolins Construction Ltd.).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING APRIL

17317-69-R: Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Beef Terminal Limited (Respondent) v. Butcher Workers Employees Association (Predecessor Trade Union). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 75).

17595-70-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. W. W. Weber, Limited (Respondent). (GRANTED).

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING APRIL

17659-70-U: Dravo of Canada Limited (Applicant) v. Tunnel & Rock Workers Union, Local 183 (Respondent). (WITHDRAWN).

APPLICATION FOR DECLARATION THAT LOCKOUT UNLAWFUL DISPOSED OF DURING APRIL

17468-69-U: International Union of Operating Engineers, Local 793 (Applicant) v. Robert McAlpine Ltd. (Respondent). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 83).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING APRIL

17132-69-U: United Steelworkers of America (Applicant) v. Patterson Plating Limited (Respondent). (GRANTED)

- AND -

17277-69-U: United Steelworkers of America (Applicant) v. Patterson Plating Limited (Respondent). (GRANTED).

17391-69-U: Canada Bread Company Limited (Applicant) v. The Bakery & Confectionery Workers' International Union of America, Local 322; The Bakery & Confectionery Workers' International Union of America, Local 415; The Bakery & Confectionery Workers' International Union of America;and Morris Zimmerman (Respondents). (WITHDRAWN).

17400-69-U: International Union of Operating Engineers, Local 796 (Applicant) v. Hopîtal Montfort (Respondent). (WITHDRAWN).

17540-69-U: Ottawa Typographical Union, Number 102 (Applicant) v. The Ottawa Citizen, a division of Southam Press Limited (Respondent). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 84).

17676-70-U: Pratt & Lambert - Inc. (Applicant) v. Ernest B. Anger, 3707 Elm Street, Ridgeway, Ontario (see attached list) (Respondents). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING APRIL

16200-69-U: United Steelworkers of America (Complainant) v. Brayshaws Steel Limited (Respondent).(GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 89).

17208-69-U: United Brotherhood of Carpenters and Joiners of America (Complainant) v. Modern Cabinet Industries Ltd. (Respondent). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 108).

17070-69-U: Canadian Brotherhood of Railway, Transport and General Workers (Complainant) v. Belisle Automobiles Limited (Respondent). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 103).

17332-69-U: United Steelworkers of America (Complainant) v. Crowe Foundry Limited (Respondent). (DISMISSED).

- AND -

17365-69-U: United Steelworkers of America (Complainant) v. Crowe Foundry Limited (Respondent). (DISMISSED).

- AND -

17539-69-U: United Steelworkers of America (Complainant) v. Crowe Foundry Limited (Respondent). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 112).

17333-69-U: United Steelworkers of America (Complainant) v. James Metal Finishing Ltd. (Respondent). (WITHDRAWN).

17389-69-U: International Union of Operating Engineers, Local 796 (Complainant) v. Hopital Montfort (Respondent). (WITHDRAWN).

17428-69-U: The Hotel and Club Employees' Union, Local 299, Toronto of the Hotel and Restaurant Employees' and Bartenders' International Union, (A.F.L.-C.I.O.-C.L.C.) (Complainant) v. Commonwealth Holiday Inns of Canada Limited (Respondent). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 114).

17488-69-U: William Campbell (Complainant) v. Inter City Truck Lines and Teamsters Local Union 880 (Respondent). (WITHDRAWN).

17511-69-U: Charles Wallace Jones (Complainant) v. Northern Electric Co. Ltd. (Respondent). (DISMISSED).

17512-69-U: Bakery and Confectionery Workers' International Union of America, Local 264 (Complainant) v. Margaret's Fine Foods Limited (Respondent). (WITHDRAWN).

17630-70-U: William Milton (Complainant) v. Works Department Town of Paris (Respondent). (WITHDRAWN).

APPLICATION UNDER SECTION 47a DISPOSED OF DURING APRIL

17226-69-M: Local Union 339, International Brotherhood of Electrical Workers, A.F.L., C.I.O., C.L.C. (Applicant) v. Hydro Electric Commission of Thunder Bay (Respondent). (GRANTED).

Unit: "all outside employees in the line operations and station operations of the respondent at Thunder Bay, save and except foremen and station supervisors, persons above the rank of foreman and station supervisor and students employed for the school vacation period."

Number of names of persons on voters' list		32
Number of persons who cast ballots	32	
Number of ballots marked in favour of applicant	23	
Number of ballots marked against applicant	9	

APPLICATION UNDER SECTION 63 (FINANCIAL STATEMENT REQUESTED BY TRADE UNION MEMBER) DISPOSED OF DURING APRIL

17596-70-M: Harold J. Robertson (Complainant) v. Canadain Business Machine Workers' Union (Respondent). (DISMISSED).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING APRIL

17086-69-M: L. U. 548, International Brotherhood of Electrical Workers (Applicant) v. The Board of Light and Heat Commissioners of the City of Guelph (Respondent).

17429-69-M: Laborers' International Union of North America Local No. 506 (Applicant) v. Artex Precast Limited (Respondent). (WITHDRAWN).

17523-69-M: Canadian Union of General Employees (Applicant) v. North York General Hospital (Respondent).

(SEE INDEXED ENDORSEMENT PAGE 126).

REFERENCE TO BOARD PURSUANT TO SECTION 79a

17159-69-M: International Union United Automobile, Aerospace, Agricultural Implement Workers of America (UAW) (Trade Union) v. Duplate Canada Limited Hawkesbury Division (Employers).

SEE INDEXED ENDORSEMENT PAGE 127).

17270-69-M: United Electrical, Radio and Machine Workers of America (UE) (Trade Union) v. Marsland Engineering Limited (Employer).

(SEE INDEXED ENDORSEMENT PAGE 133).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

15832-68-R: International Union of Electrical, Radio and Machine Workers (Applicant) v. Bausch & Lomb Optical Company Limited (Respondent) v. Group of Employees (Objectors). (REQUEST DENIED).

17233-69-R: International Union of United Brewery, Flour, Cereal Soft Drink and Distillery Workers of America, Local 325 Etobicoke Ontario and Vicinity (Applicant) v. Barton Distilling (Canada) Limited (Respondent) v.

Distillery, Rectifying, Wine and Allied Workers' International Union of America, AFL-CIO, CLC (Intervener #1) v. Canadian Union of Operating Engineers, on behalf of its Local 104 (Intervener #2). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 143).

17320-69-R: Oil, Chemical and Atomic Workers International Union, (Applicant) v. Shell Canada Limited (Respondent) v. Shell Employees' Association (Sarnia Refinery) (Intervener). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 144).

17339-69-R: Draftsmen's Association of Ontario, Local 164, American Federation of Technical Engineers, A.F.L.-C.I.O., C.L.C. (Applicant) v. Canron Limited (Respondent). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 145).

17480-69-R: Lay Employees of Scarborough Centenary Hospital Association (Applicant) v. The Canadian Union of General Employees (Respondent) v. Scarborough Centenary Hospital Association (Intervener). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 146).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79(1)

16760-69-R: Christian Labour Association of Canada (Applicant) v. Sandercock Construction Limited (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 147).

INDEXED ENDORSEMENTS - CERTIFICATION

11205-65-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Di Lorenzo Construction Company (Respondent).

BEFORE: G. W. Reed, Q.C., Chairman, and Board Members E. Boyer and R. W. Teagle.

APPEARANCES AT THE HEARING: R. Koskie for the applicant; G. Ferguson, Q.C., for the respondent; and J. P. Sanderson for A. Di Mateo.

DECISION OF THE BOARD: April 8, 1970.

1. On December 17, 1965, the International Association of Bridge, Structural and Ornamental Iron Workers, Local 721, the International Hod Carriers', Building and Common Labourers' Union of America, Local 506 and the United Brotherhood of Carpenters and Joiners of America applied to be certified for their respective craft bargaining units for each of the following employers: Di Lorenzo Construction Company, Forming Construction Limited, Toronto Forming Company and Dilcon Construction Limited.

AN EXAMINER WAS APPOINTED IN ALL TWELVE APPLICATIONS AND, AFTER LENGTHY EXAMINATIONS AND FURTHER HEARINGS, THE APPLICATIONS WERE ALL DISMISSED, SOME IN NOVEMBER 1966 AND OTHERS IN NOVEMBER, 1967.

2. IN NOVEMBER, 1969 THE UNIONS IN QUESTION APPLIED UNDER SECTION 79(1) OF THE ACT, REQUESTING THE BOARD TO RECONSIDER ITS EARLIER DECISIONS. THE MATTER WAS LISTED FOR HEARING TO ENABLE THE APPLICANTS TO SHOW CAUSE WHY AT THIS LATE DATE THE BOARD SHOULD ENTERTAIN SUCH A REQUEST. THE HEARING DATE WAS PUT OVER UNTIL JANUARY 19, 1970 BECAUSE THE PARTIES WERE INVOLVED IN OTHER MATTERS BEFORE THE BOARD. AT THE HEARING AND AT A CONTINUATION IN MARCH THE BOARD HEARD EVIDENCE RESPECTING THE NATURE OF THE NEW EVIDENCE WHICH THE APPLICANTS PROPOSED TO ADDUCE, THE TIME AND CIRCUMSTANCES UNDER WHICH IT HAD BEEN OBTAINED, TOGETHER WITH THE REPRESENTATIONS OF COUNSEL AS TO THE COURSE THE BOARD SHOULD OR SHOULD NOT PURSUE.

3. IT IS IMPORTANT TO EMPHASIZE AT THIS POINT THAT ALL THAT TOOK PLACE BEFORE THE BOARD WAS A "SHOW CAUSE" HEARING. WE DID NOT HEAR THE NEW EVIDENCE WHICH IT IS SAID WILL BE ADDUCED AND, OF COURSE, ARE IN NO POSITION TO CONSIDER ITS TOTAL EFFECT, IF ANY, ON THE PRIOR PROCEEDINGS. FOR THAT REASON WE DO NOT PROPOSE TO DWELL AT ANY LENGTH ON THE NATURE OF THE ALLEGED EVIDENCE OR TO REVIEW IN DETAIL ALL THE CIRCUMSTANCES LEADING UP TO ITS DISCOVERY AND WHAT TRANSPIRED THEREAFTER. IT IS POSSIBLE THAT WHAT IS PRESENTLY BEFORE US MAY BE SEEN IN QUITE A DIFFERENT LIGHT WHEN ALL THE EVIDENCE IS IN AND, ACCORDINGLY, WE EMPHASIZE THAT WHAT FOLLOWS IS BASED ON WHAT IS PRESENTLY BEFORE THE BOARD.

4. THE ALLEGATIONS FALL INTO TWO DIFFERENT CLASSES OF ACTS. IN THE FIRST PLACE, IT IS ALLEGED THAT, AT SOME TIME PRIOR TO THE FILING OF THE APPLICATIONS, TIME CARDS FOR EMPLOYEES WHICH CONTAINED THEIR CLASSIFICATION WERE, AT THE DIRECTION OF OFFICERS OR OFFICIALS OF CERTAIN OF THE NAMED RESPONDENTS, REPLACED BY OTHER TIME CARDS CONTAINING NO CLASSIFICATIONS AND, FURTHER, THAT IN SOME CASES THE NAMES OF THE EMPLOYERS WERE ALSO CHANGED. TWO OF THE ISSUES BEFORE THE EXAMINER AND THE BOARD WERE THE CLASSIFICATIONS OF CERTAIN EMPLOYEES AND THE QUESTION AS TO WHICH OF THE FOUR COMPANIES WAS THEIR EMPLOYER. SECONDLY, IT IS ALLEGED THAT OFFICERS OR OFFICIALS OF CERTAIN OF THE NAMED RESPONDENTS INSTRUCTED EMPLOYEES TO GIVE FALSE TESTIMONY BEFORE THE EXAMINER RESPECTING THEIR CLASSIFICATIONS AND THAT, AS A RESULT, FALSE TESTIMONY WAS IN FACT GIVEN.

5. DEALING FIRST WITH THE QUESTION OF THE TIME CARDS WE ARE SATISFIED AT THIS TIME THAT THE APPLICANTS HAD NO KNOWLEDGE OF ANY ALLEGED REPLACEMENT AT THE TIME OF THE VARIOUS EXAMINATIONS OR AT THE HEARINGS BEFORE THE BOARD AND THAT, THEREAFTER, DUE DILIGENCE WOULD NOT HAVE RESULTED IN THE ACQUISITION OF THIS KNOWLEDGE. WE ARE FURTHER SATISFIED THAT THE APPLICANTS HAVE ACTED WITH DUE DILIGENCE SINCE FIRST ACQUIRING KNOWLEDGE OF THE ALLEGATIONS IN FEBRUARY OF 1969. IT IS ARGUED, HOWEVER, THAT THE TIME CARDS WERE NOT IN ISSUE BEFORE THE EXAMINER OR THE BOARD. IN ONE SENSE THIS IS TRUE. HOWEVER, THE

EXAMINER IN HIS FIRST INTERIM REPORT DOES REFER TO THE FACT THAT "AT THE MEETING I INFORMED THE PARTIES ABOUT THE SITUATION AS SHOWN BY THE PAYROLLS AND 'TIME SHEETS'". (PAGE 3, PARAGRAPH 12) FURTHER, IF, AS ALLEGED, THERE WERE TIME CARDS CONTAINING CLASSIFICATIONS, THESE WOULD NORMALLY HAVE BEEN STUDIED BY THE EXAMINER AND WOULD IN ALL LIKELIHOOD HAVE BECOME AN IMPORTANT PART OF THE EVIDENCE.

6. TURNING NOW TO THE SECOND ALLEGATION, WHILE IT SEEMS CLEAR THAT THE APPLICANTS SUSPECTED AND PERHAPS KNEW THAT SOME OF THE WITNESSES GAVE FALSE TESTIMONY BEFORE THE EXAMINER, WE ARE PRESENTLY SATISFIED THAT, AT THE TIME OF THE EXAMINATIONS AND THE ORIGINAL HEARINGS BEFORE THE BOARD, THE APPLICANTS HAD NO KNOWLEDGE OF THE ALLEGATION THAT THE WITNESSES WERE INSTRUCTED TO GIVE FALSE TESTIMONY. FURTHER, WHILE IT MAY WELL BE THAT WITH THEIR SUSPICIONS AND/OR KNOWLEDGE THE APPLICANTS COULD HAVE TAKEN COURSES OF ACTION IN ADDITION TO WHAT THEY CHOSE TO DO, WHICH WAS TO RELY ON CROSS-EXAMINATION, AND WHILE WITH DUE DILIGENCE THEY MIGHT WELL HAVE BEEN ABLE TO OBTAIN FURTHER EVIDENCE TO SUBSTANTIATE THEIR POSITIONS, WE ARE NOT PERSUADED IN ALL THE CIRCUMSTANCES THAT SUCH DILIGENCE WOULD HAVE REVEALED THE ALLEGATION THAT EMPLOYEES WERE INSTRUCTED TO GIVE FALSE TESTIMONY. SINCE FIRST ACQUIRING KNOWLEDGE OF THIS PARTICULAR ALLEGATION, THE APPLICANTS HAVE ACTED WITH DUE DILIGENCE.

7. THERE IS NO NEED FOR US TO CONSIDER THE POSITION OF THE APPLICANTS IF ONLY THE SECOND ALLEGATION HAD BEEN BEFORE THE BOARD. WHEN, HOWEVER, THAT ALLEGATION IS CONSIDERED ALONG WITH THE ALLEGATION RESPECTING THE TIME CARDS, THE TWO TOGETHER, IF SHOWN TO BE TRUE, COULD LEAD TO THE CONCLUSION THAT A FRAUDULENT SCHEME EXISTED TO PREVENT THE APPLICANTS FROM BEING CERTIFIED. THUS, AT THIS STAGE OF THE PROCEEDINGS WE ARE FACED WITH WHAT COULD TURN OUT TO BE FRAUD QUA BOTH THE APPLICANTS AND THE BOARD'S PROCESSES. WHERE SIMILAR ALLEGATIONS ARE MADE RESPECTING MEMBERSHIP EVIDENCE IN APPLICATIONS FOR CERTIFICATION, THE WELL-KNOWN PRACTICES AND POLICIES OF THE BOARD, AS ENUNCIATED IN SUCH CASES AS WEBSTER AIR EQUIPMENT, 58 CLLC, PARAGRAPH 18,110, AND COLLINGWOOD SHIPYARDS CASE, OLRB M.R. JUNE, 1967, P. 246, REFLECT THE GRAVITY WITH WHICH THE BOARD VIEWS SUCH CONDUCT. SIMILAR CONDUCT ON THE PART OF EMPLOYERS MUST BE VIEWED WITH EQUAL CONCERN. THIS FACT MUST BE BORNE IN MIND IN CONSIDERING THE LENGTH OF TIME WHICH HAS ELAPSED SINCE THE DECISIONS OF THE BOARD DISMISSING THE APPLICATIONS. AGAIN, THE FACT THAT WE ARE CONCERNED HERE WITH ALLEGATIONS OF FRAUD AND NOT JUST NEWLY DISCOVERED EVIDENCE IS AN IMPORTANT CONSIDERATION HAVING REGARD TO THE DECISIONS IN SUCH CASES AS HIP FOONG HONG V. H. NEOTIA AND COMPANY, [1918] A.C. 888, REEDER V. GEORGE E. SHNIER & COMPANY, [1938] O.W.N. 501, AND MCGUIRE V. HAUGH, ET AL., [1923] O.R. 9, ALL OF WHICH WERE REFERRED TO BY COUNSEL FOR THE APPLICANTS.

8. AFTER CAREFULLY CONSIDERING THE EVIDENCE BEFORE US, TOGETHER WITH THE REPRESENTATIONS OF THE PARTIES, WE ARE SATISFIED THAT, IN THE PARTICULAR CIRCUMSTANCES OF THESE CASES, THE APPLICANTS SHOULD BE AFFORDED

AN OPPORTUNITY TO ESTABLISH THEIR ALLEGATIONS. IN COMING TO THIS CONCLUSION, WE HAVE NOT OVERLOOKED THE ARGUMENTS RESPECTING THE RELIEF WHICH THE APPLICANTS ARE SEEKING SHOULD THEY PROVE THEIR ALLEGATIONS. ON THE CONTRARY, IT IS TO THIS MATTER, WHICH WAS FULLY ARGUED, THAT WE NOW PROPOSE TO TURN OUR ATTENTION.

9. THE APPLICANTS SUBMIT THAT IF THEY ARE SUCCESSFUL IN HAVING THE EARLIER DECISIONS SET ASIDE ON THE GROUND OF FRAUD, THE BOARD SHOULD TREAT THE FRAUD AS PERMEATING THE WHOLE CASE, INCLUDING THE SCHEDULES (LISTS OF EMPLOYEES) TO THE REPLIES FILED BY THE VARIOUS RESPONDENTS. THAT BEING THE CASE, IT IS ARGUED, THERE ARE IN EFFECT NO SCHEDULES FILED AND THE BOARD SHOULD ACT ON THE BASIS OF THE STATEMENT IN THE FORM 8 OF FORM 54, AS THE CASE MAY BE, OF THE NUMBER OF EMPLOYEES IN THE PROPOSED BARGAINING UNITS.

10. WITHOUT DECIDING WHETHER THE REMARKS OF LORD BUCKMASTER IN THE HIP FOONG HONG CASE, SUPRA (AT P. 894) WERE INTENDED TO APPLY TO ALL THE PROCEEDINGS IN A CASE OR MERELY TO THE JUDGMENT OR DECISION IN QUESTION, WE ARE NOT PREPARED, IN THE CIRCUMSTANCES OF THIS CASE, TO ACT IN THE MANNER SUGGESTED. SECTION 7(1) OF THE LABOUR RELATIONS ACT REQUIRES THE BOARD TO "ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE..." (SEE REGINA V. ONTARIO LABOUR RELATIONS BOARD EX PARTE HANNIGAN ET AL., 67 CLLC PARAGRAPH 14,039.) IT IS TRUE THAT WHERE AN EMPLOYER FAILS TO FILE A LIST OF EMPLOYEES THE BOARD NORMALLY ACTS ON THE BASIS OF THE INFORMATION CONTAINED IN THE FORM 8 OR FORM 54. HOWEVER, WHERE THE BOARD SO ACTS, THERE IS NO REASON TO DOUBT THE ACCURACY OF THAT INFORMATION. SUCH IS NOT THE CASE IN THE APPLICATIONS NOW BEFORE US. THUS, ASIDE FROM ANY QUESTION OF ALLEGED FRAUD, IT IS CLEAR FROM THE VARIOUS REPORTS OF THE EXAMINER THAT DIFFICULT QUESTIONS EXISTED WITH RESPECT TO WHICH OF THE RESPONDENTS WAS THE EMPLOYER OF VARIOUS EMPLOYEES. WE REFER TO THE EVIDENCE OF THE CHEQUES. IN ADDITION, THERE IS THE TESTIMONY OF MICHAELS ABOUT THE ORGANIZING CAMPAIGN WHICH EXTENDED OVER A SIX-MONTH PERIOD. THE ORGANIZERS DID NOT SEEK TO ORGANIZE AT THE JOB SITES WHERE THEIR ACTIVITIES WERE RESTRICTED TO HANDING OUT LEAFLETS. THERE WERE A NUMBER OF JOB SITES INVOLVED AND FOUR DIFFERENT EMPLOYERS. MICHAELS COULD ONLY GIVE A "ROUGH ESTIMATE" OF THE TOTAL NUMBER OF EMPLOYEES INVOLVED - ABOUT 400. WHEN ASKED IF HE HAD A GOOD IDEA OF THE TOTAL NUMBER INVOLVED IN EACH APPLICATION HE REPLIED, "WE GUESSED...THERE WAS NO WAY OF DETERMINING THIS. WE ASKED A LOT OF QUESTIONS BUT THE MEN DIDN'T KNOW EITHER." HE WENT ON TO TESTIFY FURTHER THAT SOME OF THE NEW MEN FROM ITALY MIGHT HAVE BEEN IN DOUBT AS TO THEIR CLASSIFICATION AND THE ORGANIZERS THEN HAD TO DECIDE BASED ON WHAT THE MEN TOLD THEM. IN THESE CIRCUMSTANCES THERE IS EVERY REASON TO DOUBT THE ACCURACY OF THE INFORMATION CONTAINED IN THE VARIOUS FORMS 54 FILED WITH EACH APPLICATION AND WE ARE NOT PREPARED TO ASCERTAIN THE NUMBER OF EMPLOYEES IN EACH BARGAINING UNIT ON THE BASIS OF THAT INFORMATION.

11. That being the case, even if the applicants are successful in establishing their allegations of fraud, they may face great difficulties in securing their ultimate objective, that is, certification. We are in no position at this time to assess these difficulties or to decide whether it is now possible to establish the number of employees in the various bargaining units at the material times. However, as we indicated earlier, it is our conclusion that the applicants should be given an opportunity, should they so desire, to proceed.

12. There remains for consideration the demand for further particulars as set out in the respondents' letter dated January 9,1970. In the unusual circumstances of this case and having regard in particular to the number of employees involved and to the length of time which has elapsed since the acts complained of took place (over four years) it is our ruling that the particulars requested be supplied.

13. In the result, the Registrar is directed to list this matter for hearing for the purpose of inquiring into the allegations contained in the applicant's letters of November 12th, 27th and December 30th, 1969.

17180-69-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local Union 91, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. ZELLER'S LIMITED (Respondent).

BEFORE: J. D. O'Shea, Q.C., Vice-Chairman, and Board Members O. Hodges and H. F. Irwin.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: April 23, 1970.

. . .

2. The Board further finds that all employees of the respondent at Brockville, save and except manager, persons above the rank of manager, office and sales staff, constitute a unit of employees of the respondent appropriate for collective bargaining.

3. For the purposes of clarity, the Board declares that the gas pump attendants are employees of the respondent included in the bargaining unit.

4. Having regard to the evidence contained in the Report of the Examiner dated March 3, 1970, and the representations of the respondent

WITH RESPECT THERETO, THE BOARD FINDS THAT BONNIE BALDWIN ACTS AS A SALES GIRL AND CASHIER IN THE STORE OF THE RESPONDENT'S AUTO CENTRE AND AS SUCH IS A RETAIL SALES CLERK AND IS THEREFORE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF SALES STAFF. WHILE THE MECHANICS AND THE GAS PUMP ATTENDANTS ALSO SELL MANY OF THE PRODUCTS SOLD BY MISS BALDWIN, SUCH SALES ARE MERELY INCIDENTAL TO THEIR MAIN FUNCTIONS. THE MAIN FUNCTIONS OF THE BARGAINING UNIT EMPLOYEES ARE READILY DISTINGUISHABLE FROM THE RETAIL SALES CLERK FUNCTIONS REGULARLY PERFORMED BY MISS BALDWIN.

. . .

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN: APRIL 23, 1970.

1. I DISSENT.

2. MISS BONNIE BALDWIN IS A DEPARTMENT HEAD EMPLOYED IN THE SALES DEPARTMENT OF THE RESPONDENT'S AUTO CENTRE AT BROCKVILLE. THE "ODD TIME" SHE WORKS IN THE STOCKROOM. SHE IS HOURLY-RATED AND IT IS AGREED BY THE PARTIES THAT SHE HAS NO MANAGERIAL FUNCTIONS NOR IS SHE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. SHE IS THE ONLY PERSON IN THE SALES DEPARTMENT OF THE AUTO CENTRE WHO IS FULL TIME. SHE HAS NO EMPLOYEES UNDER HER SUPERVISION. THERE IS A PART-TIME GIRL WHO COMES IN ON SATURDAY AND TAKES HER PLACE.

3. MISS BALDWIN'S DUTIES ARE VARIABLE AND INCLUDE WRITING OUT INVOICES, KEEPING THE SHELVES CLEAN, TICKETING MERCHANDISE, LOOKING AFTER SALES, CLEANING THE COUNTERS, COUNTING THE CASH, DOING FILING WORK, PASSING INVOICES TO THE MAINSTORE THAT ARE TO BE PAID AND KEEPING THE STOCK ON GAS. ANY EMPLOYEE AT THE AUTO CENTRE, INCLUDING THE PARTS MAN, CAN SELL THE SAME MERCHANDISE AS MISS BALDWIN. SHE HERSELF CAN SELL ANYTHING AND EVERYTHING THAT IS PLACED ON SALE AT THE AUTO CENTRE IN THE OTHER DEPARTMENTS. SHE OPERATES THE CASH REGISTER IN THE STORE. THERE IS ALSO A CASH REGISTER FOR THE PARTS DEPARTMENT AND ONE FOR THE SERVICE DEPARTMENT WHICH ARE OPERATED BY THE EMPLOYEES OF THOSE DEPARTMENTS.

4. THERE ARE 10 EMPLOYEES IN THE AUTO CENTRE BELOW THE RANK OF MANAGER AND THEY ARE CLASSIFIED AS FOLLOWS:

NUMBER OF EMPLOYEES	CLASSIFICATION
1	PARTS MAN
2	R.F.T. MECHANICS "A"
2	R.F.T. APPRENTICE MECHANICS
2	GAS PUMP SALESMEN
2	PART-TIME STUDENTS
1	SALES CLERK (MISS BALDWIN)
10	

5. In all the circumstances of this case, it would appear both appropriate and proper that Miss Baldwin should be included in the bargaining unit and I would have so directed.

17209-69-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Modern Cabinet Industries of Ottawa Limited (Respondent).

Before: J. H. Brown, Q.C., Alternate Chairman, and Board Members E. Boyer and R. W. Teagle.

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2. The Board further finds that all employees of the respondent employed at and working out of the Township of Nepean, save and except foremen, persons above the rank of foreman, office and sales staff, constitute a unit of employees of the respondent appropriate for collective bargaining.

3. The Board has considered the Report of the Examiner dated March 2, 1970 and the representations of the applicant and the respondent with regard to the Report in their respective letters of March 4 and March 10, 1970.

4. The Report records the agreement of the parties that eight persons were in the bargaining unit at the relevant time for purposes of the count. The parties, however, are in dispute as to the employment status of S. Winiarczyk in relation to the date of the making of the application which was January 15, 1970.

5. The evidence contained in the Report of the Examiner is that the last day that Winiarczyk worked for the respondent was Monday, January 12, 1970. Winiarczyk "booked off" sick on January 13th and 14th. On January 15th, the respondent's foreman was informed that Winiarczyk was not sick but working on another job. The respondent, on January 15th, thereupon terminated his employment as of January 12, 1970. A check of the respondent's payroll and Winiarczyk's time card shows that the last day of his employment was January 12, 1970. The fact that the Examiner checked the payroll and secured the information therefrom which appears in the Report, in our view, adequately answers the objections raised by the representative of the applicant in paragraph 4 of his letter of March 4, 1970. The Board accordingly finds that Winiarczyk was not in the employ of the respondent as of the date of the making of the application or any time thereafter and accordingly is not included on the list of employees in the bargaining unit for purposes of the count.

6. In paragraph 7 of his letter dated March 4, 1970, the representative of the applicant drew to the attention of the Board that one Richard Allen, who was discharged on January 14, 1970, the day prior to the making of the instant application on January 15, 1970, was the subject of a complaint made under section 65 of The Labour Relations Act (Board File No. 17208-69-U). The division of the Board which heard the above complaint issued its decision on April 14, 1970. The majority of the division found that Allen was discharged by the respondent on January 14, 1970 for union activity contrary to the Act. Paragraphs 13 and 14 of the majority decision read as follows:

> 13. The complainant advised the Board that Allen does not seek reinstatement but does ask for compensation for wages lost from the date of discharge on January 14, 1970 to February 20, 1970 when he obtained other employment.
>
> 14. The Board therefore determines that as compensation for lost wages for the aforementioned period, the respondent forthwith shall pay Richard Allen the sum of $464.00.

7. In light of the above disposition made by the Board in the complaint with respect to Allen (Board File No. 17208-69-U), the question before us is whether or not Richard Allen was an employee of the respondent as of the date of the making of the instant application. Section 1(2) of the Act reads:

> For the purposes of this Act, no person shall be deemed to have ceased to be an employee by reason only of his ceasing to work for his employer as the result of a lock-out or strike or by reason only of his being dismissed by his employer contrary to this Act or to a collective agreement.

8. The division of the Board seized with the complaint made under section 65 found that Allen was discharged on January 14, 1970, for union activity, contrary to The Labour Relations Act. In other words, the dismissal of Allen by the respondent falls under the purview of section 1(2) of the Act. In these circumstances, until such time as the grievor Allen took some positive action to indicate that he had terminated his employment with the respondent, he remained an employee. Clearly, on January 15, 1970, Allen had taken no such action. Accordingly, he was still an employee of the respondent as of the date of the making of the instant application and is included in the bargaining unit for purposes of the count.

9. In light of the above ruling, the name of Richard Allen is added to the agreed list of eight persons included in the bargaining unit for purposes of the count, making a total of nine employees. The applicant has submitted evidence of membership on behalf of four of the nine employees. The representative of the applicant in paragraph 8 of his letter of March 4, 1970 requested leave of the Board to submit evidence of membership on behalf of Richard Allen. Section 48(1) of the Board's Rules of Procedure and Regulations provides that evidence of membership in a trade union shall not be accepted unless it is filed not later than the terminal date for the application, which in this case was January 26, 1970. The request of the applicant accordingly is denied.

10. The Board is satisfied on the basis of all the evidence before it that less than forty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on January 26, 1970, the terminal date fixed for this application and the date which the Board determines, under section 77(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

11. The application is therefore dismissed.

17224-69-R: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Local Union 46 (Applicant) v. NADECO LIMITED (Respondent) v. Christian Labour Association of Canada (Intervener).

BEFORE: G. W. Reed, Q.C., Chairman , and Board Members H. F. Irwin and P. J. O'Keeffe.

APPEARANCES AT THE HEARING: L. C. Arnold and D. Clark for the applicant; F. R. von Veh and E. C. Wallace for the respondent; and W. I. Binnie and E. Vanderkloet for the intervener.

DECISION OF THE BOARD: April 10, 1970.

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3. The applicant is seeking to be certified for a bargaining unit consisting of plumbers, steamfitters, pipe welders and apprentices in the Metro Toronto area. The respondent and the intervener were parties to a collective agreement which was in operation at the time this application was filed. The agreement in question covers all employees in an area similar but not equivalent to Board area No. 8. Non-working foremen, persons above that rank and office staff are excluded. Both the respondent and the intervener take the position that the Board should exercise its discretion under section 6(2) of the Labour Relations Act and not apply the subsection because the employees

AFFECTED BY THE APPLICATION WERE INCLUDED IN A BARGAINING UNIT FOR WHICH ANOTHER UNION BARGAINED AT THE TIME THE APPLICATION WAS MADE. ON THE BASIS OF THE EVIDENCE AND, HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT SECTION 6(2) IS APPLICABLE TO THE FACTS OF THIS CASE. THE QUESTION THEREFORE IS WHETHER, IN ALL THE CIRCUMSTANCES, WE SHOULD EXERCISE THE DISCRETION GIVEN THE BOARD IN THE CONCLUDING PORTION OF SECTION 6(2).

IN KENT TILE & MARBLE CO. LTD., 61 CLLC PARAGRAPH 16,204, THE BOARD WAS FACED WITH A SIMILAR PROBLEM. IN THAT CASE THE BOARD PERMITTED THE APPLICANT TO CARVE OUT A CRAFT UNIT FROM A BARGAINING UNIT OF OTHER EMPLOYEES REPRESENTED BY ANOTHER TRADE UNION AND, IN SO DOING, STATED AT PAGE 941:

> ...WHERE THERE IS AN INCUMBENT, THE PROVISION AS TO CRAFT PRIVILEGES WHICH WAS, AS WE POINTED OUT, OF A MANDATORY NATURE BEFORE THE AMENDMENT, HAS BEEN CONVERTED BY THE AMENDMENT INTO A DISCRETIONARY ONE, BUT WITH A LEGISLATIVE INSTRUCTION THAT THE BOARD SHOULD GIVE CONSIDERATION TO CRAFT PRIVILEGES AND DETERMINE IN ALL THE CIRCUMSTANCES OF THE PARTICULAR CASE WHETHER CRAFT PRIVILEGES SHOULD OR SHOULD NOT BE RECOGNIZED. IN THE CONSTRUCTION INDUSTRY, WHERE ORGANIZATION HAS TRADITIONALLY BEEN CARRIED ON ON A CRAFT BASIS, IT IS OUR OPINION THAT GREAT WEIGHT MUST BE GIVEN TO CRAFT INTERESTS. IT IS NOT WITHOUT SIGNIFICANCE IN THIS CONNECTION THAT THE LEGISLATURE MUST HAVE HAD IN MIND THE JURISDICTIONAL CLAIMS OF CERTAIN TRADE UNIONS WHEN IT SET UP THE MACHINERY FOR DEALING WITH JURISDICTIONAL DISPUTES (SECTION 66). ALTHOUGH THE SECTION IS NOT CONFINED TO THE CONSTRUCTION INDUSTRY, SURELY A BOARD SUCH AS THIS SHOULD TAKE COGNIZANCE OF THE WELL-KNOWN FACT THAT IT IS IN THE CONSTRUCTION INDUSTRY WHERE MOST DISPUTES CONCERNING JURISDICTION ARISE.

THIS DECISION APPEARS TO HAVE BEEN FOLLOWED IN BARNETT-MCQUEEN COMPANY LIMITED, OLRB M.R. JULY, 1962, P. 121; THOMAS FULLER CONSTRUCTION COMPANY (1958) LIMITED, OLRB M.R. MAY, 1963, P. 75 AND P. 108; AND ELWOOD ROBINSON LIMITED, OLRB M.R. JUNE, 1967, P. 261. THE PROBLEM IS ALSO CONSIDERED IN PRE-CON MURRAY LIMITED, OLRB M.R. OCT., 1967, P. 684, WHERE, HOWEVER, OTHER FACTORS WERE TAKEN INTO CONSIDERATION IN DETERMINING THAT IT WAS PROPER TO PERMIT A CRAFT UNIT TO BE CARVED OUT OF AN EXISTING BARGAINING UNIT IN THE CONSTRUCTION INDUSTRY. WE HAVE BEEN UNABLE TO FIND A CASE WHERE THE BOARD HAS REFUSED TO CARVE OUT A CRAFT CONSTRUCTION UNIT FROM AN EXISTING BARGAINING UNIT CONSISTING OF THE CRAFT EMPLOYEES, TOGETHER WITH OTHER EMPLOYEES.

4. Where parties seek to invoke the Board's discretion under the provisions of section 6(2) it is usual for such parties to adduce evidence before the Board showing the length of the relationship and the fact that the incumbent trade union has given equal representation to the craft employees whom the applicant trade union seeks to carve out of the existing unit. See, for example, Canada Sand Papers Limited, OLRB M.R. Nov., 1967, p. 742 and Jan., 1968, p. 958. In the present case, although afforded every opportunity to do so, neither the intervener nor the respondent chose to call evidence on this point.

5. Having regard to all the above considerations, to the evidence before us and to the representations of the parties, the Board further finds that a bargaining unit consisting of plumbers, steamfitters, pipe welders and apprentices is appropriate in this case.

6. On the basis of the evidence before us, but not including a Declaration Concerning Membership dated March 3, 1970, and having regard to the provisions of the Labour Relations Amendment Act,1970 and to the representations of the parties, the Board is satisfied that not less than forty-five per cent of the employees of the respondent in the voting constituency set out below at the time the application was made, were members of the applicant on March 3, 1970, the new terminal date fixed for this application in a decision dated February 23, 1970, and the date which the Board determines, under section 77(2)(j) of The Labour Relations Act to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

7. The Board directs that a representation vote be taken of the employees of the respondent in the following voting constituency:

> all plumbers, steamfitters, pipe welders and apprentices in the employ of the respondent working within a twenty-five mile radius from the Toronto City Hall, and including the Town of Newmarket, and an area bounded on the east by the westerly limits of the third concession road, running north and south, east of Yonge Street; on the north by the southerly limits of the first concession road, running east and west, north of Newmarket; on the west by the easterly limits of the first concession road, running north and south, west of Yonge Street, save and except non-working foremen and persons above the rank of non-working foreman, and office staff.

8. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

17294-69-R: CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) v. B. MOSCONE TILE CO. LTD. (RESPONDENT) v. LOCAL NO. 31 MARBLE MASONS, TILE SETTERS AND TERRAZZO MECHANICS AFFILIATED WITH THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA (INTERVENER).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. J. BLAIS AND J. MEIORIN FOR THE APPLICANT; B. W. BINNING AND B. MOSCONE FOR THE RESPONDENT; NO ONE APPEARING FOR THE INTERVENER.

DECISION OF THE BOARD: APRIL 8, 1970.

. . .

3. AS A BAR TO THIS APPLICATION FOR CERTIFICATION THE RESPONDENT RAISED AN AGREEMENT BETWEEN ITSELF AND THE INTERVENER MADE ON FEBRUARY 7, 1969 AND REMAINING IN FORCE UNTIL SEPTEMBER 1, 1971, COVERING ALL JOURNEYMEN, MARBLE, TILE AND TERRAZZO MECHANICS AND THEIR APPRENTICES AND IMPROVERS IN, INTER ALIA, THE BOARD'S GEOGRAPHIC AREA NUMBER 8. THE APPLICANT ADOPTED THE POSITION THAT SINCE THE APPLICATION HAD BEEN FILED DURING THE FIRST YEAR THAT THE AGREEMENT WAS IN EXISTENCE, THE ONUS WAS ON THE PARTIES TO THE AGREEMENT TO ESTABLISH THAT IT IS A BAR TO THE PRESENT APPLICATION. AFTER CONSIDERING THE REPRESENTATIONS OF THE APPLICANT AND THE RESPONDENT, THE BOARD INFORMED THE APPLICANT AND THE RESPONDENT THAT THE ONUS WAS ON THE PARTIES TO THE AGREEMENT TO ESTABLISH THAT THE INTERVENER WAS AT THE TIME THE AGREEMENT WAS ENTERED INTO ENTITLED TO REPRESENT THE EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT AND AFFECTED BY THE PRESENT APPLICATION. REFERENCE IS MADE TO THE REGINA V. OLRB EX PARTE BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 268 CASE, 69 CLLC, ¶14.181 AND TO SECTION 45A OF THE LABOUR RELATIONS ACT. THE RESPONDENT THEN INFORMED THE BOARD THAT IT WAS NOT OFFERING ANY EVIDENCE TO ESTABLISH THAT AT THE TIME THE AGREEMENT WAS ENTERED INTO THE INTERVENER WAS ENTITLED TO REPRESENT THE EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT AND AFFECTED BY THE PRESENT APPLICATION.

HAVING REGARD TO THE EVIDENCE ADDUCED AT THE HEARING AND TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER DATED FEBRUARY 7, 1969, IS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(c) OF THE LABOUR RELATIONS ACT AND IS NOT A BAR TO THE PRESENT APPLICATION FOR CERTIFICATION.

4. THE BOARD CONSIDERED THE REPRESENTATIONS OF THE APPLICANT AND THE RESPONDENT ON THE POINT WHETHER THIS APPLICATION FOR CERTIFICATION WAS PROPERLY MADE UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT. COUNSEL FOR THE APPLICANT ARGUED THAT THE APPLICANT'S CONSTITUTION CONTEMPLATED THE TAKING INTO MEMBERSHIP OF EMPLOYEES IN THE BUILDING, CONSTRUCTION AND RELATED TRADES AND THAT THE BOARD SHOULD TREAT THE APPLICANT AS BEING A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO THE PRESENT CONSTRUCTION INDUSTRY WITHIN THE MEANING OF SECTION 90(B) OF THE LABOUR RELATIONS ACT. COUNSEL FOR THE RESPONDENT SUBMITTED THAT THE APPLICANT HAS FAILED TO SHOW THAT IT IS A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO THE CONSTRUCTION INDUSTRY. THE BOARD DOES NOT ACCEPT THE CONTENTION OF COUNSEL FOR THE APPLICANT THAT SIMPLY BECAUSE THE APPLICANT'S CONSTITUTION CONTEMPLATES TAKING INTO MEMBERSHIP EMPLOYEES WHO ARE ENGAGED IN THE BUILDING, CONSTRUCTION AND RELATED TRADES, THAT THE APPLICANT IS ENTITLED TO MAKE THE PRESENT APPLICATION UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT. COUNSEL FOR THE APPLICANT ADMITTED THAT THE APPLICANT HAD NEITHER ENTERED INTO ANY COLLECTIVE AGREEMENTS PERTAINING TO THE CONSTRUCTION INDUSTRY NOR RECEIVED ANY CERTIFICATES FROM THE BOARD. IN THESE CIRCUMSTANCES, IT CANNOT BE SAID THAT THE APPLICANT IS A TRADE UNION "THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO THE CONSTRUCTION INDUSTRY" WITHIN THE MEANING OF SECTION 90(B) OF THE LABOUR RELATIONS ACT (SEE BEN BRUINSMA AND SONS LIMITED CASE, OLRB MONTHLY REPORTS, FEBRUARY 1964, P. 647; MANOR CARPENTERS CASE, OLRB MONTHLY REPORTS, JANUARY 1969, P. 1026; ZACHARY DE VUONO LIMITED CASE, OLRB MONTHLY REPORTS, JULY 1969, P. 493; AND STERLING TILE COMPANY CASE, BOARD FILE NO. 17112-69-R). THE BOARD THEREFORE FURTHER FINDS THAT THE APPLICANT'S APPLICATION FOR CERTIFICATION IS NOT AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

5. ALTHOUGH THE APPLICANT HAS APPLIED FOR BARGAINING UNIT CONSISTING OF ALL EMPLOYEES, IT APPEARS FROM THE MATERIAL FILED WITH THE BOARD THAT THE RESPONDENT EMPLOYED ONLY TILE SETTERS ON THE DATE OF THE MAKING OF THE APPLICATION. HAVING REGARD TO THE PRINCIPLE ENUNCIATED IN THE WINTER & SON CASE, OLRB MONTHLY REPORTS, FEBRUARY 1967, P. 889, AND TO PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, THE BOARD FURTHER FINDS THAT ALL TILE SETTERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE

AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. COUNSEL FOR THE APPLICANT AND THE RESPONDENT MADE SUBMISSIONS AS TO WHETHER OR NOT THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT COMPLIES WITH THE ELIGIBILITY REQUIREMENTS OF THE APPLICANT'S CONSTITUTION, HAVING REGARD TO THE DECISION OF SUPREME COURT OF CANADA IN THE METROPOLITAN LIFE INSURANCE CASE, 70 CLLC, ¶14,008. HAVING CONSIDERED THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT, THE ELIGIBILITY PROVISIONS OF THE APPLICANT'S CONSTITUTION AND THE LABOUR RELATIONS AMENDMENT ACT, 1970, THE BOARD IS SATISFIED THAT THE APPLICANT HAS MET THE NECESSARY REQUIREMENTS RELATING TO THE ISSUE OF ELIGIBILITY.

7. THE RESPONDENT FILED A LIST CONTAINING THE NAMES OF 7 PERSONS, ALL OF WHOM FALL INTO THE BARGAINING UNIT WHICH THE BOARD FOUND TO BE APPROPRIATE IN PARAGRAPH 4. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP ON BEHALF OF 5 PERSONS ON THE RESPONDENT'S LIST. THE EVIDENCE IN EACH CASE IS IN THE FORM OF COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPT CARDS. THE MEMBERSHIP APPLICATIONS BEAR THE SIGNATURES OF THE PERSONS APPLYING FOR MEMBERSHIP. THE RECEIPTS, WHICH INDICATE A PAYMENT OF $1.00 IN EACH CASE AND BEAR THE SIGNATURE OF THE COLLECTOR, ARE NOT COUNTERSIGNED BY THE PERSONS APPLYING FOR MEMBERSHIP, BUT BEAR THE PRINTING NAMES OF THE PERSONS APPLYING FOR MEMBERSHIP. IT IS THE BOARD'S PRACTICE TO REQUIRE THAT ALL RECEIPTS FOR INITIATION FEES OR MONTHLY DUES BE BOTH SIGNED BY THE PAYER AND COUNTERSIGNED BY THE PAYEE, ON THE ASSUMPTION THAT THIS EXTRA PRECAUTION PROVIDES MORE ADEQUATE PROTECTION FOR THE BOARD AND FOR THE APPLICANT RELYING ON DOCUMENTARY EVIDENCE OF MEMBERSHIP. (SEE THE STERLING TILE COMPANY CASE, BOARD FILE NO. 17112-69-R). HAVING REGARD TO THE FACT THAT NONE OF THE RECEIPTS SUBMITTED BY THE APPLICANT INDICATING THE PAYMENT OF $1.00 ARE COUNTERSIGNED, THE BOARD FINDS THAT THE EVIDENCE OF MEMBERSHIP IS SUFFICIENTLY WEAKENED SO AS TO DISENTITLE THE APPLICANT TO CERTIFICATION WITHOUT A REPRESENTATION VOTE.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 9, 1970, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 5.

ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 5 ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

10. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

17297-69-R: CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) v. PERFECT TILE COMPANY (RESPONDENT) v. LOCAL NO. 31 MARBLE MASONS, TILE SETTERS AND TERRAZZO MECHANICS AFFILIATED WITH THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA (INTERVENER).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. J. BLAIS AND JOHN MEIORIN FOR THE APPLICANT; R. D. PERKINS FOR THE RESPONDENT; NO ONE APPEARED FOR INTERVENER.

DECISION OF THE BOARD: APRIL 15, 1970.

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3. FOR THE REASONS GIVEN IN THE B. MOSCONE TILE CO. LTD. CASE, BOARD FILE NO. 17294-69-R, THE BOARD FINDS THAT THIS APPLICATION IS NOT AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

4. PRIOR TO THE HEARING IN THIS MATTER ON APRIL 9, 1970, THE RESPONDENT ALLEGED THE EXISTENCE OF A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER EFFECTIVE FROM THE DATE OF SIGNING ON FEBRUARY 7, 1969. THE INTERVENER SUBMITTED THAT THIS APPLICATION FOR CERTIFICATION WAS UNTIMELY BY REASON OF THE EXISTENCE OF A COLLECTIVE AGREEMENT MADE ON FEBRUARY 7, 1969 BETWEEN THE INTERVENER AND THE METRO MARBLE, TILE & TERRAZZO ASSOCIATION OF WHICH THE RESPONDENT WAS, AT ALL MATERIAL TIMES, A MEMBER AND BOUND BY THIS COLLECTIVE AGREEMENT.

5. THE APPLICANT CHALLENGED THIS ALLEGED COLLECTIVE AGREEMENT AND ADOPTED THE POSITION THAT SINCE THE APPLICATION HAD BEEN FILED DURING THE FIRST YEAR THAT THE ALLEGED COLLECTIVE AGREEMENT WAS IN EXISTENCE, THE ONUS WAS ON THE PARTIES TO THE

AGREEMENT TO ESTABLISH THAT IT IS A BAR TO THE PRESENT APPLICATION. ALTHOUGH DULY NOTIFIED OF THE HEARING, THE INTERVENER WAS NOT REPRESENTED AT THE HEARING. THE RESPONDENT WAS REPRESENTED AT THE HEARING AND INFORMED THE BOARD THROUGH ITS COUNSEL THAT IT NO LONGER WISHED TO PUT FORWARD THE AGREEMENT AS A BAR TO THE PRESENT APPLICATION. THE ONUS IS ON THE PARTIES TO THE AGREEMENT TO ESTABLISH THAT THE INTERVENER WAS AT THE TIME THE AGREEMENT WAS ENTERED INTO ENTITLED TO REPRESENT THE EMPLOYEES COVERED BY THE AGREEMENT AND AFFECTED BY THE PRESENT APPLICATION. THERE WAS NO EVIDENCE BEFORE THE BOARD TO ESTABLISH THAT AT THE TIME THE AGREEMENT WAS ENTERED INTO THE INTERVENER WAS ENTITLED TO REPRESENT THE EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT AND AFFECTED BY THE PRESENT APPLICATION. THE BOARD THEREFORE FINDS THAT THE ALLEGED AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER MADE ON FEBRUARY 7, 1969, IS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(c) OF THE LABOUR RELATIONS ACT AND IS NOT A BAR TO THE PRESENT APPLICATION FOR CERTIFICATION. REFERENCE IS MADE TO SECTION 45a OF THE LABOUR RELATIONS ACT.

6. THE APPLICANT HAS APPLIED FOR AN ALL EMPLOYEE UNIT. THE EVIDENCE BEFORE THE BOARD ESTABLISHES THAT ON THE DATE OF THE MAKING OF THE APPLICATION, THE RESPONDENT EMPLOYED ONLY TILE SETTERS AND A RESILIENT FLOOR LAYER. HAVING REGARD TO THE PRINCIPLE ENUNCIATED IN THE WINTER & SON CASE, OLRB MONTHLY REPORTS, FEBRUARY 1967, P. 889, AND TO PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, THE BOARD FURTHER FINDS THAT ALL TILE SETTERS AND ALL EMPLOYEES ENGAGED IN THE INSTALLATION OF RESILIENT FLOORING IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP ON BEHALF OF THREE PERSONS WHOSE NAMES APPEAR ON THE LIST OF FIVE EMPLOYEES FILED BY THE RESPONDENT. THE EVIDENCE IN EACH CASE TAKES THE FORM OF COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT CARDS. THE APPLICATION PORTION OF THE CARDS BEARS THE SIGNATURE IN EACH CASE OF THE PERSON APPLYING FOR MEMBERSHIP. THE RECEIPT PORTION OF THE CARD, WHICH IS ON THE REVERSE SIDE OF THE APPLICATION, INDICATES THE PAYMENT OF ONE DOLLAR IN EACH CASE AND BEARS THE SIGNATURE OF THE COLLECTOR. THE RECEIPT PORTION OF EACH OF THE CARDS, HOWEVER, IS NOT COUNTERSIGNED BY THE PERSON APPLYING FOR MEMBERSHIP BUT RATHER BEARS THE PRINTED NAME OF THAT PERSON. HAVING REGARD TO THE NATURE OF THE MEMBERSHIP EVIDENCE FILED, THE BOARD FINDS THAT THE EVIDENCE OF MEMBERSHIP IS SUFFICIENTLY WEAKENED SO AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE (SEE STERLING TILE COMPANY CASE, BOARD FILE NO. 17112-69-R).

8. The Board is satisfied on the basis of all the evidence before it that not less than forty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on February 25, 1970, the new terminal date fixed for this application and the date which the Board determines, under section 77(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

9. A representation vote will be taken of the employees of the respondent in the bargaining unit described in paragraph six. All employees of the respondent in the bargaining unit described in paragraph six on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

10. Voters will be asked to indicate whether or not they wish to bargain collectively through the applicant.

11. The matter is referred to the Registrar.

17299-69-R: Canadian Union of Construction Workers (Applicant) v. LANCIA TILE COMPANY (Respondent) v. Local No. 31 Marble Masons, Tile Setters and Terrazzo Mechanics affiliated with the Bricklayers, Masons and Plasterers International Union of America (Intervener).

BEFORE: J. H. Brown, Q.C., Alternate Chairman, and Board Members E. Boyer and R. W. Teagle.

APPEARANCES AT THE HEARING: J. J. Blais and J. Meiorin for the applicant, R. D. Perkins for the respondent, S. L. Robins, Q.C., for the intervener.

DECISION OF THE BOARD: April 6, 1970.

1. Counsel for the intervener advised the Board that the intervener was withdrawing its intervention and had no further interest in these proceedings.

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3. The instant application is made under the Construction Industry sections of the Act. Counsel for the applicant advised the Board that the applicant has not entered into any collective agreements pertaining to the construction industry. For the reasons given in the Speedy Tile & Carpet Contractors Case, (Board File No. 17307-69-R) the Board finds that the applicant is not a trade union that according to established trade union practice pertains to the

CONSTRUCTION INDUSTRY WITHIN THE MEANING OF SECTION 90(B) OF THE LABOUR RELATIONS ACT.

4. THE RESPONDENT IS ENGAGED SOLELY IN THE TILE SETTING BUSINESS. HAVING REGARD TO THE NATURE OF THE RESPONDENT'S OPERATIONS AND THE WORK PERFORMED BY THE PERSONS IN ITS EMPLOY, THE BOARD FINDS THAT ALL TILE SETTER MECHANICS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING. (SEE WINTER & SON CASE, OLRB M.R. FEBRUARY 1967, P. 889.)

5. THE RESPONDENT FILED A LIST CONTAINING THE NAMES OF SIX PERSONS, ALL OF WHOM ARE IN THE BARGAINING UNIT. THE APPLICANT SUBMITTED EVIDENCE OF MEMBERSHIP ON BEHALF OF FIVE PERSONS, ALL OF WHOSE NAMES CORRESPOND TO NAMES APPEARING ON THE RESPONDENT'S LIST. THE EVIDENCE TAKES THE FORM OF COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT CARDS. THE APPLICATION PORTION OF THE CARDS BEARS THE SIGNATURES OF THE PERSONS APPLYING FOR MEMBERSHIP. THE RECEIPT PORTION OF THE CARDS, WHICH IS ON THE REVERSE SIDE OF THE APPLICATION, INDICATES THE PAYMENT OF ONE DOLLAR IN EACH CASE AND BEARS THE SIGNATURE OF THE COLLECTOR. FOUR OF THE RECEIPTS, HOWEVER, ARE NOT COUNTERSIGNED BY THE PERSON APPLYING FOR MEMBERSHIP. RATHER, THEY BEAR THE PRINTED NAMES OF THE PERSONS APPLYING FOR MEMBERSHIP. IN ADDITION TO THE COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT CARDS, THE APPLICANT ALSO SUBMITTED MEMBERSHIP CARDS FOR ALL OF THE PERSONS CONCERNED SIGNED BY THE GENERAL PRESIDENT OF THE APPLICANT CERTIFYING THAT EACH PERSON IS A MEMBER OF THE APPLICANT IN GOOD STANDING.

6. FOR THE REASONS GIVEN IN THE POLMAR TILE COMPANY CASE, BOARD FILE NO. 17304-69-R, THE ONLY RELEVANT DATE FOR PURPOSES OF DETERMINING THE MEMBERSHIP POSITION OF THE APPLICANT WITH REGARD TO THE COUNT IS THE DATE OF THE MAKING OF THE APPLICATION.

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8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

17304-69-R: CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) V. POLMAR TILE COMPANY (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. J. BLAIS AND J. MEIORIN FOR THE APPLICANT, R. D. PERKINS FOR THE RESPONDENT.

DECISION OF THE BOARD: April 6, 1970.

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2. The instant application is made under the Construction Industry sections of the Act. Counsel for the applicant advised the Board that the applicant has not entered into any collective agreements pertaining to the construction industry. For the reasons given in the Speedy Tile & Carpet Contractors Case, (Board File No. 17307-69-R) the Board finds that the applicant is not a trade union that according to established trade union practice pertains to the construction industry within the meaning of section 90(b) of The Labour Relations Act.

3. The respondent is engaged solely in the tile setting business. Having regard to the nature of the respondent's operations and the work performed by the persons in its employ, the Board finds that all tile setter mechanics and labourers in the employ of the respondent in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

4. For purposes of clarity, the Board declares that tile setter helpers fall within the classification of labourer.

5. The practice of the Board in applications for certification made under the Construction Industry sections of the Act is to look only to the date of the making of the application in determining the number of persons in the bargaining unit for purposes of the count. The reason for this practice is that employees on construction projects are often only employed for a short period of time and/or at sporadic intervals. Notwithstanding that an applicant, as here, may not be a trade union that according to established trade union practice pertains to the construction industry, where the respondent clearly is operating a business in the construction industry, as in this case, the respondent's employment practices vis-a-vis its employees are no different than that described above. Accordingly, the same reasoning applies in considering only the date of the making of the application to determine the membership position of an applicant trade union.

6. The respondent filed a list containing the names of eight persons, all of whom are in the bargaining unit. The applicant submitted evidence of membership on behalf of seven persons. In four cases the names correspond to those appearing on the respondent's list. The evidence takes the form of combination application for

MEMBERSHIP AND RECEIPT CARDS. THE APPLICATION PORTION OF THE CARDS BEARS THE SIGNATURE OF THE PERSON APPLYING FOR MEMBERSHIP. THE RECEIPT PORTION OF THE CARDS, WHICH IS ON THE REVERSE SIDE OF THE APPLICATION, INDICATES THE PAYMENT OF ONE DOLLAR IN EACH CASE AND BEARS THE SIGNATURE OF THE COLLECTOR. THE RECEIPTS, HOWEVER, ARE NOT COUNTERSIGNED BY THE PERSONS APPLYING FOR MEMBERSHIP. RATHER, THEY BEAR THE PRINTED NAMES OF THE PERSONS APPLYING FOR MEMBERSHIP. IN ADDITION TO THE COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT CARDS, THE APPLICANT ALSO SUBMITTED MEMBERSHIP CARDS FOR ALL OF THE PERSONS CONCERNED SIGNED BY THE GENERAL PRESIDENT OF THE APPLICANT CERTIFYING THAT EACH PERSON IS A MEMBER OF THE APPLICANT IN GOOD STANDING.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 9, 1970, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

17307-69-R: CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) v. SPEEDY TILE & CARPET CONTRACTORS (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. J. BLAIS AND J. MEIORIN FOR THE APPLICANT, F. R. VON VEH FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 6, 1970.

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3. The instant application is made under the Construction Industry sections of the Act. Counsel for the applicant advised the Board that the applicant has not entered into any collective agreements pertaining to the construction industry. Counsel submits, however, that in view of the fact that the constitution of the applicant envisages the applicant taking employees in the building, construction and related trades into membership, the Board should treat the applicant as being a trade union that pertains to the construction industry within the meaning of section 90(b) of the Act. Counsel for the respondent, on the other hand, submits that the applicant has failed to show that it is a trade union that according to established trade union practice pertains to the construction industry. Counsel therefore argues that, in accordance with earlier decisions of the Board, the instant application should not be dealt with under the Construction Industry sections of the Act.

4. We do not accept the argument of counsel for the applicant that simply because the applicant's constitution contemplates the taking into membership of employees who are engaged in the construction industry that the applicant is entitled to make the instant application under the Construction Industry sections of the Act. Since the applicant has not entered into any collective agreements or, for that matter, has not been issued any certificates by this Board, pertaining to the construction industry, it is not a trade union "that according to established trade union practice pertains to the construction industry" within the meaning of section 90(b) of the Act (see Ben Bruinsma and Sons Limited Case, OLRB M.R. February 1964, p. 647 and Manor Carpenters Case, OLRB M.R. January 1969, p. 647).

5. In its Reply, the respondent alleged that there was a collective agreement in effect binding upon the respondent and Local 31, Marble Masons, Tile Setters and Terrazzo Mechanics. The agreement, we would mention, was not filed with the Board. According to the Reply, the agreement was signed and became effective on February 7, 1969 and remains in effect until September 1, 1970. Counsel for the respondent advised the Board at the hearing of the application, however, that in light of the circumstances under which the alleged agreement was entered into, he was not raising it as a bar to the instant application.

6. The Board finds that all tile setter mechanics in the employ of the respondent in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

7. Counsel for the applicant and the respondent made submissions as to whether or not the evidence of membership filed by the applicant complies with the eligibility provisions of the applicant's constitution, having regard to the decision of the Supreme Court of Canada in the Metropolitan Life Insurance Case, 70 CLLC ¶14,008. Having considered the evidence of membership filed by the applicant, the eligibility provisions of its constitution and The Labour Relations Amendment Act, 1970, the Board is satisfied that the applicant has met the necessary requirements relating to the issue of eligibility.

8. The respondent filed a list containing the names of six persons, all of whom fall within the unit the Board found to be appropriate for collective bargaining in paragraph 6. The applicant filed evidence of membership on behalf of the six persons on the respondent's list. The evidence, in all cases, takes the form of combination application for membership and receipt cards. The application portion of the cards bears the signature in each case of the person applying for membership. The receipt portion of the card, which is on the reverse side of the application, indicates the payment of one dollar in each case and bears the signature of the collector. The receipt portion of four of the cards, however, is not countersigned by the person applying for membership. Rather, it bears the printed name of the person applying for membership. According to the evidence, it was the collectors who printed the names on the receipts. Having regard to the fact that only two of the six receipts filed by the applicant are countersigned, the Board finds that the evidence of membership is sufficiently weakened as to cause the Board to seek the confirmatory evidence of a representation vote (see Sterling Tile Company Case, Board File No. 17112-69-R).

9. The Board is satisfied on the basis of all the evidence before it that not less than forty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on February 9, 1970, the terminal date fixed for this application and the date which the Board determines, under section 77(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

10. A representation vote will be taken of the employees of the respondent in the bargaining unit. All employees of the respondent in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

11. Voters will be asked to indicate whether or not they wish to bargain collectively through the applicant.

12. The matter is referred to the Registrar.

17323-69-R: Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. M. Loeb (London) Limited, trading as Shoppers City Licensed Operators of K Mart Foods (Respondent) v. Group of Employees (Objectors).

BEFORE: R. A. Furness, Vice-Chairman and Board Members P. J. O'Keeffe and R. W. Teagle.

APPEARANCES AT THE HEARING: Victor Pathe and Les Dowling for the applicant; R. C. Filion and R. J. Lyons for the respondent; and no one appearing for the group of employees.

DECISION OF THE BOARD: April 22, 1970.

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2. In a decision of the Board dated February 25th, 1970, the Board authorized an examiner to inquire into and report back to the Board on the duties and responsibilities of the person classified by the respondent as a Meat Department Head. According to the list of employees filed by the respondent there was on the date of the making of the application an employee named D. Panack who was described by the respondent as a Meat Department Head. When the examiner conducted his meeting on March 16th, 1970, it became evident that the person to be examined was named Robert Charles Bear who had been in the employ of the respondent for only three weeks. A representative of the applicant took the position that the evidence of this employee would not assist the Board since the employee was not an employee of the respondent on the date of the making of the application. The examiner informed the parties that he was going to proceed and examine Robert Charles Bear and that the parties should make their representations to the Board with respect of the relevancy of this employee's evidence. At the second hearing held in this matter on April 8th, 1970, the Board was informed that, in fact, the position of Meat Department Head in the respondent's store at Chatham was vacant on the date of the making of the application. It is the policy of the Board not to exclude from a bargaining unit persons in a managerial classification that does not exist at the time of the making of the application. It is the Board's practise to draw the line of supervision at the lowest existing level of persons exercising managerial functions. On the date of the making of this application there were no persons in the proposed bargaining unit who exercised managerial functions. Having regard to the foregoing, the Board further finds that all Meat Department employees of the respondent at its retail stores at Chatham, save and except persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

. . .

4. A certificate will issue to the applicant.

17386-69-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. DISTRICT OF MANITOULIN HOME FOR THE AGED (Respondent).

BEFORE: R. A. Furness, Vice-Chairman and Board Members E. Boyer and R. W. Teagle.

DECISION OF THE BOARD: April 29, 1970.

. . .

2. At the hearing in this matter counsel for the respondent raised the question of the eligibility of its employees to become members of the applicant. Counsel for the respondent stated that he had written to the applicant requesting a copy of its constitution but had not received a copy of the applicant's constitution from it. He requested an adjournment until the applicant complied with his request. Counsel for the applicant opposed the request for an adjournment and adopted the position that there was no duty on the applicant to furnish the material requested by counsel for the respondent, that this material was a matter of public record under the Corporations Act and that it was open to counsel for the respondent to issue a subpoena duces tecum to one or more officers of the applicant in order to have the material he required brought before the Board. Counsel for the respondent conceded that he had not read the constitution of the applicant. After considering the representations of counsel, the Board denied the request by counsel for the respondent for an adjournment on the grounds that he had had an opportunity to have the constitution of the applicant and any other documents he sought to rely on brought before the Board. Although invited to do so, counsel for the respondent failed to make any submissions or call any evidence in support of the question he had raised on the eligibility of the employees of the respondent to become members of the applicant. The applicant, however, informed the Board that the employees in question were eligibile for membership in the applicant, that such employees had been taken in as members in the past, and that the employees affected by this application were members under its constitution. This evidence was not challenged by counsel for the respondent.

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5. A certificate will issue to the applicant.

17472-69-R: Draftsmen's Association of Ontario, Local 164, American Federation of Technical Engineers, A.F.L.-C.I.O., C.L.C. (Applicant) v. DOMINION BRIDGE COMPANY LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: J. D. O'Shea, Q.C., Vice-Chairman, and Board Members O. Hodges and F. W. Murray.

APPEARANCES AT THE HEARING: L. H. Rosen for the applicant, J. P. Sanderson, E. R. Graydon and H. Tamaki for the respondent, no one for the objectors.

DECISION OF THE BOARD: April 7, 1970.

1. The respondent in this matter objected to the status of the applicant union to represent the employees in the bargaining unit herein described. The basis for the respondent's objection was that the constitution of the parent body of the applicant contained the following provision:

> Article IV - Membership
>
> Sec. 2. No person shall be admitted to membership in the Federation who is not employed, or eligibile for employment, in an occupation under the jurisdiction of this Federation, or who advocates principles or lends support to organizations or movements whose purposes and objectives are contrary to the fundamental principles of the established Government of the United States of America, in the case of residents of the United States of America or its territories; or contrary to the fundamental principles of the established Government of the Dominion of Canada, in the case of residents of the Dominion of Canada; or which are in conflict with the policies of this Federation.

A similar provision is contained in the constitution of Local 164.

2. It was the respondent's argument that the applicant's constitution precludes a person from becoming a member "who advocates principles or lends support to organizations or movements whose purposes and objectives are contrary to the fundamental principles of the established Government of the Dominion of Canada; or which are in conflict with the policies of this Federation". It was the responden's argument that such provisions are repugnant to the same extent as discrimination on the grounds of race, creed, nationality, ancestry or place or origin. This prohibition would prohibit members or supporters of the Communist party or other similar organization from becoming members of the applicant union. It was the respondent's position that

IN ACCORDANCE WITH THE PRINCIPLES OUTLINED BY THE BOARD IN THE GAYMER AND OULTRAM CASE, (1954) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '49-'54, ¶17,073, C.L.S. 76-429, THE OTTAWA CITIZEN CASE, (1954) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '49-'54, ¶17076, C.L.S. 76-431, AND THE R.M.P. INDUSTRIES LIMITED CASE, OLRB MONTHLY REPORT, JULY 1962, P. 140, THE APPLICANT SHOULD NOT BE CERTIFIED AS BARGAINING AGENT FOR ANY OF THE EMPLOYEES OF THE RESPONDENT.

3. THERE WAS NO EVIDENCE THAT ANY OF THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED HAD BEEN REFUSED MEMBERSHIP IN THE APPLICANT OR WERE OF A CLASS OF PERSONS WITH RESPECT TO WHOM MEMBERSHIP WOULD BE DENIED UNDER THE PROVISIONS OF THE CONSTITUTION REFERRED TO ABOVE.

4. SECTION 10 OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

> THE BOARD SHALL NOT CERTIFY A TRADE UNION IF ANY EMPLOYER OR ANY EMPLOYER'S ORGANIZATION HAS PARTICIPATED IN ITS FORMATION OR ADMINISTRATION OR HAS CONTRIBUTED FINANCIAL OR OTHER SUPPORT TO IT OR IF IT DISCRIMINATES AGAINST ANY PERSON BECAUSE OF HIS RACE, CREED, COLOUR, NATIONALITY, ANCESTRY OR PLACE OR ORIGIN.

5. THE RESTRICTIONS CONTAINED IN THE CONSTITUTION OF THE APPLICANT ARE NOT RESTRICTIONS WHICH ARE PROHIBITED UNDER THE PROVISIONS OF SECTION 10 OF THE ACT. THERE IS THEREFORE NOTHING IN THE LABOUR RELATIONS ACT WHICH WOULD PRECLUDE THE BOARD FROM CERTIFYING THE APPLICANT UNION EVEN THOUGH THERE ARE CERTAIN RESTRICTIONS TO MEMBERSHIP.

6. SINCE THERE IS NO EVIDENCE BEFORE US WHICH WOULD INDICATE THAT ANY OF THE EMPLOYEES OF THE RESPONDENT HAVE BEEN DENIED MEMBERSHIP OR THAT THE APPLICANT UNION WOULD REFUSE TO BARGAIN ON THEIR BEHALF, WE ARE UNABLE TO FIND THAT ANY OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN THIS CASE WOULD BE ADVERSELY AFFECTED BY THE CONSTITUTIONAL PROVISIONS OF THE APPLICANT UNION.

7. SINCE THERE IS NOTHING IN THE LABOUR RELATIONS ACT WHICH WOULD PRECLUDE THE APPLICANT FROM BEING CERTIFIED BECAUSE OF ITS CONSTITUTIONAL PROVISIONS AND THERE IS NOTHING IN THE APPLICANT'S CONSTITUTION WHICH WOULD PRECLUDE THE APPLICANT FROM REPRESENTING ANY OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, WE MUST FIND THAT WE ARE UNABLE TO GIVE EFFECT TO THE RESPONDENT'S OBJECTIONS IN THIS CASE.

8. HAVING REGARD TO OUR FINDINGS SET OUT ABOVE, WE ARE OF THE VIEW THAT THE CASES CITED BY THE RESPONDENT ARE DISTINGUISHABLE ON THEIR FACTS AND HAVE NO APPLICATION TO THE FACTS OF THIS CASE. THE OBJECTIONS OF THE RESPONDENT ARE ACCORDINGLY DISMISSED.

9. While the applicant had filed a Form 8 which had been prepared for the signature of L. H. Rosen, a Canadian Organizer of the applicant, this document was not signed by Mr. Rosen until the hearing in this matter. At the hearing, when the fact that the Form 8 had not been signed was brought to the attention of Mr. Rosen, Mr. Rosen immediately affixed his signature to the document. Pursuant to the provisions of section 57(2) of the Board's Rules of Procedure, the Board enlarges the time prescribed by section 6 of the Board's Rules of Procedure to permit the applicant to file the Declaration Concerning Membership Documents in Form 8 at the hearing in this matter.

10. Mr. D. K. Aynsley, Examiner, is authorized to inquire into and report to the Board on the composition of the bargaining unit and in particular whether draftsmen employed by Dominion Bridge Canron Joint Venture at Sudbury are employees of the respondent eligible for inclusion in a bargaining unit of draftsmen at its Mount Dennis drawing office. The Examiner is further authorized to inquire into and report to the Board on the duties and responsibilities of squad leaders.

17493-69-R: Oil & Gas Burner Technicians Union, Local 1267 (Applicant) v. PRE-FEB CUSHIONING LIMITED (Respondent).

BEFORE: J. H. Brown, Q.C., Alternate Chairman, and Board Members E. Boyer and R. W. Teagle.

APPEARANCES AT THE HEARING: R. Koskie for the applicant, R. McComb and M. Himel for the respondent.

DECISION OF THE BOARD: April 13, 1970.

. . .

2. The Board further finds that all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

3. The charter dated June 27, 1969 was issued to the applicant by the Labourers' International Union of North America. The charter reads in part:

> Now, therefore, acting under and in pursuance of the authority vested in us by the Constitution and laws of the International Union On June 26, 1969, we issue this charter to the

APPLICANTS AND TO THEIR LEGALLY ELECTED SUCCESSORS TO INSTITUTE AND CONSTITUTE A LOCAL UNION TO BE KNOWN AS

OIL AND GAS BURNER TECHNICIANS'
LOCAL UNION No. 1267

WITH THE FOLLOWING TERRITORIAL JURISDICTION:
TORONTO, ONT., CANADA AND VICINITY

AND WITH THE FOLLOWING CRAFT JURISDICTION: OIL AND GAS BURNER TECHNICIANS

THIS CHARTER IS ISSUED IN ACCORDANCE WITH AND SUBJECT TO THE INTERNATIONAL UNION CONSTITUTION. THE LOCAL UNION SHALL BE BOUND BY AND COMPLY WITH ALL OF THE PROVISIONS OF THE INTERNATIONAL UNION CONSTITUTION, THE UNIFORM LOCAL UNION CONSTITUTION AND THE UNIFORM DISTRICT COUNCIL CONSTITUTION AND SHALL CONDUCT ITS AFFAIRS IN ACCORDANCE WITH THE PROVISIONS THEREOF AND IN ACCORDANCE WITH ALL RULES, REGULATIONS, POLICIES, PRACTICES AND LAWFUL ORDERS AND DECISIONS OF THE INTERNATIONAL UNION.

BY VIRTUE OF THIS CHARTER, THE LOCAL UNION IS HEREBY AUTHORIZED AND EMPOWERED TO INITIATE ANY PERSON ELIGIBLE TO MEMBERSHIP IN ACCORDANCE WITH THE CONSTITUTION AND TO DO AND PERFORM SUCH OTHER ACTS AS ARE PRESCRIBED IN THE CONSTITUTION AND THE RULES, REGULATIONS, POLICIES, PRACTICES AND LAWFUL ORDERS AND DECISIONS OF THE INTERNATIONAL UNION.

4. COUNSEL FOR THE RESPONDENT SUBMITS THAT BY THE CHARTER THE APPLICANT IS LIMITED TO TAKING INTO MEMBERSHIP PERSONS CLASSIFIED AS OIL AND GAS BURNER TECHNICIANS. COUNSEL ARGUES THAT SINCE THE EMPLOYEES OF THE RESPONDENT FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION DO NOT FALL WITHIN THESE CLASSIFICATIONS AND SINCE THE APPLICANT HAS NO HISTORY OF TAKING OTHER THAN OIL AND GAS BURNER TECHNICIANS INTO MEMBERSHIP, THE EMPLOYEES WHO ARE THE SUBJECT OF THE INSTANT APPLICATION ARE NOT ELIGIBLE FOR MEMBERSHIP IN THAT APPLICANT. COUNSEL FOR THE RESPONDENT ACCORDINGLY SUBMITS THAT THE APPLICATION MUST BE DISMISSED.

5. COUNSEL FOR THE APPLICANT DREW ATTENTION TO THE PROVISION IN THE CHARTER OF THE APPLICANT, QUOTED ABOVE, WHICH PROVIDES THAT THE CHARTER IS ISSUED IN ACCORDANCE WITH AND SUBJECT TO THE INTERNATIONAL UNION CONSTITUTION. MOREOVER, THE CHARTER FURTHER PROVIDES THAT THE LOCAL UNION (I.E. THE APPLICANT) IS BOUND BY AND

MUST COMPLY WITH ALL OF THE PROVISIONS OF THE INTERNATIONAL UNION CONSTITUTION, THE UNIFORM LOCAL UNION CONSTITUTION AND THE UNIFORM DISTRICT COUNCIL CONSTITUTION AND MUST CONDUCT ITS AFFAIRS IN ACCORDANCE WITH THE PROVISIONS OF THE CONSTITUTION AND IN ACCORDANCE WITH ALL RULES, REGULATIONS, POLICIES, PRACTICES AND LAWFUL ORDERS AND DECISIONS OF THE INTERNATIONAL UNION. COUNSEL FOR THE APPLICANT FURTHER DREW ATTENTION TO THE PROVISION OF THE CHARTER, QUOTED ABOVE, WHICH AUTHORIZES THE APPLICANT TO INITIATE ANY PERSON ELIGIBLE FOR MEMBERSHIP IN ACCORDANCE WITH THE CONSTITUTION.

6. MICHAEL REILLY, BUSINESS MANAGER OF THE LABOURERS' DISTRICT COUNCIL OF ONTARIO, GEORGE ALLEN, AN INTERNATIONAL REPRESENTATIVE OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, AND JOHN MCPHERSON, THE BUSINESS MANAGER OF THE APPLICANT, ALL TESTIFIED THAT THEY INTERPRETED THE LANGUAGE OF THE CHARTER AND CONSTITUTION OF THE INTERNATIONAL UNION AND THE LABOURERS' MANUAL OF JURISDICTION AS PLACING NO LIMITATION ON THE APPLICANT AS TO THE CLASSIFICATION OF EMPLOYEES WHICH IT CAN TAKE INTO MEMBERSHIP, SAVE AND EXCEPT ANY RESTRICTIONS CONTAINED IN THE MANUAL. ALL THREE ABOVE-NAMED OFFICERSOF THE LABOURERS' UNION TESTIFIED THAT THE EMPLOYEES WHO ARE THE SUBJECT OF THE INSTANT APPLICATION FALL WITHIN THE PURVIEW OF PERSONS UNDER THE HEADING OF "FACTORIES" AT PAGE 13 OF THE MANUAL. THAT PROVISION READS IN PART: "ALL WORK IN FACTORIES, MILLS AND INDUSTRIAL PLANTS PERFORMED NOW OR AS MAY BE ACQUIRED HEREAFTER. . ." THE MANUAL OF JURISDICTION, WE WOULD POINT OUT, IS INCORPORATED INTO THE CONSTITUTION OF THE INTERNATIONAL UNION BY VIRTUE OF ARTICLE III ENTITLED "JURISDICTION". THAT ARTICLE READS IN PART THAT "THE TRADE JURISDICTION OF THIS INTERNATIONAL UNION SHALL INCLUDE . . . ALL WORK GRANTED BY THE DECISIONS OF THE AMERICAN FEDERATION OF LABOUR AND ITS AFFILIATED DEPARTMENTS AND AS OUTLINED IN THE MANUAL OF JURISDICTION DECLARED AND PROMULGATED BY THE GENERAL EXCUTIVE BOARD AND AS HISTORICALLY AND TRADITIONALLY EXERCISED BY THE INTERNATIONAL UNION."

7. REILLY, ALLEN AND MCPHERSON ALL TESTIFIED THAT THE APPLICANT WILL ACCEPT ALL OF THE PERSONS WHO ARE THE SUBJECT OF THE INSTANT APPLICATION INTO MEMBERSHIP AND WILL ACCORD TO THEM, WITHOUT ANY RESTRICTION, ALL OF THE DUTIES AND PRIVILEGES OF MEMBERSHIP. MCPHERSON'S EVIDENCE IS THAT ALL OF THE EMPLOYEES OF THE RESPONDENT WHO HAVE APPLIED FOR MEMBERSHIP IN THE APPLICANT, IN FACT, HAVE BEEN ACCEPTED INTO MEMBERSHIP.

8. IN THE WAYNE PUMP CANADA LIMITED CASE, OLRB M.R. OCTOBER 1966, P. 489, THE RESPONDENT CONTENDED THAT THE CONSTITUTION OF THE APPLICANT, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 183, PREVENTED IT FROM ADMITTING TO MEMBERSHIP CERTAIN OF THE EMPLOYEES IN THE BARGAINING UNIT. THE APPLICANT DISPUTED THE RESPONDENT'S CONTENTION, AND LED EVIDENCE WITH

RESPECT TO THE CONSTITUTION OF THE APPLICANT AND THE MANNER IN WHICH THE ELIGIBILITY PROVISIONS OF THAT CONSTITUTION HAD BEEN INTERPRETED BY RESPONSIBLE OFFICERS OF THE APPLICANT. THE BOARD DEALT WITH THE ABOVE SUBMISSION OF THE RESPONDENT IN THE FOLLOWING MANNER AT P. 490:

> THE APPLICANT RELIES ON THE JURISDICTIONAL CLAIM SET OUT IN ITS MANUAL OF JURISDICATION WITH RESPECT TO "ALL WORK IN FACTORIES, MILLS AND INDUSTRIAL PLANTS PERFORMED NOW OR AS MAY BE ACQUIRED HEREAFTER - - -". THE PROVISION GOES ON TO ENUMERATE CERTAIN PARTICULAR CLASSIFICATIONS OF FACTORY WORK. WHILE IT MAY BE THAT THE CONSTITUTION AND MANUAL OF JURISDICTION DO NOT SPECIFICALLY DEAL WITH THE ELIGIBILITY FOR MEMBERSHIP OF ALL OF THE EMPLOYEES IN THE BARGAINING UNIT DEALT WITH IN THIS APPLICATION, IT IS ALSO THE CASE THAT THE CONSTITUTION DOES NOT IN TERMS PRECLUDE THE APPLICANT FROM REPRESENTING ANY OF THE EMPLOYEES IN THE BARGAINING UNIT.
>
> IN INTERPRETING UNION CONSTITUTIONS FOR THE PURPOSE OF DETERMINING THE ELIGIBILITY FOR MEMBERSHIP OF PERSONS IN A PROPOSED BARGAINING UNIT, THE BOARD HAS FOLLOWED THE PRINCIPLE SET OUT IN THE JOHN E. RIDDELL AND SON LTD. CASE, 2 C.L.S. 76-564, 568:
>
> > IN CONSTRUING CONSTITUTIONS OF TRADE UNIONS, IT MUST BE THE UNDERSTANDING OF A LAYMAN RATHER THAN A TECHNICAL INTERPRETATION OF THE WORDS THAT MUST GOVERN. WHAT WE HAVE TO ARRIVE AT IN THIS CASE IS THE INTENTION OF THE RESPONSIBLE BODIES WITHIN THE INTERNATIONAL UNION AS TO THE MEANING OF THE MEMBERSHIP ARTICLE OF THE CONSTITUTION.
>
> IT IS CLEAR FROM THE EVIDENCE IN THE INSTANT CASE THAT THE RESPONSIBLE OFFICIALS OF THE APPLICANT HAVE PLACED AN INTERPRETATION ON THE PROVISIONS OF ITS CONSTITUTION AMD MANUAL OF JURISDICTION WHICH IS BROAD ENOUGH TO MAKE ALL OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ELIGIBLE FOR MEMBERSHIP. INDEED, THE EVIDENCE IS THAT ALL OF THE PERSONS IN THE BARGAINING UNIT HAVE IN FACT BEEN TREATED AS ELIGIBLE FOR MEMBERSHIP, AND THE EVIDENCE IS THAT NO PERSON WHO WOULD COME WITHIN AN INDUSTRIAL "ALL-EMPLOYEE" BARGAINING UNIT HAS EVER BEEN REFUSED MEMBERSHIP IN THE APPLICANT TRADE UNION. IT IS ALSO SIGNIFICANT THAT IN THE CANADIAN RADIATOR MFG. CO. LIMITED CASE, BOARD FILE NO. 8967-64-R, IN WHICH AN

INDUSTRIAL OPERATION HAVING SOME SIMILARITY TO THAT OF THE RESPONDENT WAS INVOLVED, THE BOARD CERTIFIED THE APPLICANT WITH RESPECT TO A UNIT OF "ALL EMPLOYEES" OF THE RESPONDENT WITH THE USUAL EXCEPTIONS. ON THE EVIDENCE BEFORE US, WE ARE CONSTRAINED TO CONCLUDE THAT THE ARGUMENT RAISED BY COUNSEL FOR THE RESPONDENT MUST FAIL.

THE SAME LINE OF REASONING IS APPLICABLE IN THE INSTANT APPLICATION.

9. BASED ON ALL OF THE EVIDENCE, THE BOARD IS ACCORDINGLY SATISFIED THAT THE PERSONS FOR WHOM THE APPLICANT HAS SUBMITTED EVIDENCE OF MEMBERSHIP ARE ELIGIBLE FOR MEMBERSHIP IN THE APPLICANT AND HAVE IN FACT BEEN TAKEN INTO MEMBERSHIP. THE BOARD IS FURTHER SATISFIED THAT ALL OF THE REMAINING EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING IN PARAGRAPH 2 ARE ELIGIBLE FOR MEMBERSHIP IN THE APPLICANT.

10. THE LIST OF EMPLOYEES FILED BY THE RESPONDENT WHO ARE INCLUDED IN THE BARGAINING UNIT FOR THE PURPOSE OF THE COUNT, WHICH INCLUDES TRUCK DRIVERS, TOTALS 44. THE APPLICANT HAS SUBMITTED EVIDENCE OF MEMBERSHIP FOR 27 PERSONS WHOSE NAMES CORRESPOND TO THOSE APPEARING ON THE RESPONDENT'S LIST. HAVING REGARD TO THE PROVISIONS OF THE LABOUR RELATIONS AMENDMENT ACT, 1970, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 24, 1970, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

17496-69-R: INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, DRYDEN LOCAL 105, AFL-CIO/CLC (APPLICANT) v. CHUKUNI LUMBER COMPANY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J.E.C.ROBINSON, Q.C.

APPEARANCES AT THE HEARING: E. J. RYAN, A. JOHNSON AND GEORGE MORETTIN FOR THE APPLICANT, NO ONE FOR THE RESPONDENT, MRS. J.E. SIGURDSON AND CARL S. EKHOLM FOR THE LUMBER AND SAWMILL WORKERS' UNION LOCAL 2693 OF THE BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA.

DECISION OF THE BOARD: APRIL 9, 1970.

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2. Interventions were filed in this matter on April 6, 1970 by The Lumber and Sawmill Workers' Union Local 2693 of the Brotherhood of Carpenters and Joiners of America. At the hearing, an opportunity was given to Local 2693 to establish that it had an interest in these proceedings and Local 2693 was invited to file any membership documents it had which would establish its interest. While Local 2693 tendered certain membership documents, none of the documents tendered by Local 2693 were signed by persons whose names appeared on the list of employees filed by the respondent. Since Local 2693 failed to establish that it represented any of the employees in the bargaining unit hereinafter described, counsel for Local 2693 acknowledged that Local 2693 had failed to establish an interest in these proceedings. The interventions of Local 2693 are accordingly dismissed.

3. The Board finds that the applicant is a trade union within the meaning of section 1(1)(j) of The Labour Relations Act.

4. The Board further finds that all employees of the respondent at Ear Falls, save and except superintendents, persons above the rank of superintendent, and office staff, constitute a unit of employees of the respondent appropriate for collective bargaining.

. . .

6. A certificate will issue to the applicant.

17513-69-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. STEED AND EVANS, A DIVISION OF STEED AND EVANS LIMITED (Respondent) v. Labourers International Union of North America Local 837 (Intervener).

BEFORE: R. A. Furness, Vice-Chairman and Board Members E. Boyer and R. W. Teagle.

DECISION OF THE BOARD: April 1, 1970.

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2. The applicant filed thirteen certificates of membership. The certificates are signed by the members and indicate that monthly dues of at least $6.00 have been paid for at least one month within the six month period immediately preceding the terminal date of the application. The certificates are checked and certified correct by an officer of the applicant. The applicant also filed a duly completed Form 54, Declaration Concerning Membership Documents, Construction Industry.

3. The respondent filed a reply, a list of employees containing fourteen names, but failed to file specimen signatures within the time fixed in accordance with The Labour Relations Act and the Board's Rules of Procedure.

. . .

6. In paragraph five of its Application for Certification, Construction Industry, the applicant indicated that the nature of the work performed by the employees in the proposed bargaining unit consisted of general construction work and construction of all forms for concrete formwork, including the setting and dismantling of all forms and accessories. In its Intervention, Construction Industry, the intervener recites the fact that it was granted certification by the Board on March 11, 1970 for all construction labourers. The geographic area covered by the certificate issued to the intervener on March 11, 1970, is equivalent to the area presently sought by the applicant in its Application for Certification. The intervener has requested a hearing of the application by the Board and has stated in support of this request:

> Labourers International Union of North America Local 837 is not opposed to the Application for Certification by the United Brotherhood of Carpenters and Joiners of America but opposes the jurisdiction claim of the applicant (construction of all forms for concrete formwork including the setting and dismantling of all forms and accessories).

7. The applicant is not claiming jurisdiction over the work mentioned in paragraph five of its Application for Certification, but is merely stating the nature of the work performed for informational purposes. As the Board stated in the Dalacoustic Contractors Limited case, OLRB Monthly Reports, April 1965, p. 28:

> It has not been the recent policy of the Board to describe bargaining units in terms of work to be performed by the employees in the bargaining unit and, in fact, in dealing with carpenters' cases the policy over many years has been to refer simply to carpenters and carpenters' apprentices. In other words the Board has taken the

POSITION THAT IT IS NOT THE FUNCTION OF THE BOARD TO DEFINE OR DELIMIT THE TRADE JURISDICTION OF THE VARIOUS CRAFT UNIONS UNLESS THERE ARISES IN A PARTICULAR CASE A QUESTION OF CONFLICT OF BARGAINING RIGHTS. SUCH A CONFLICT HAS NOT ARISEN IN THE PRESENT CASE AND THE BOARD DOES NOT INTEND TO DEPART FROM ITS USUAL PRACTICE.

IN THE PRESENT APPLICATION FOR CERTIFICATION THE INTERVENER IS NOT OPPOSING THE APPLICANT'S REQUEST FOR CERTIFICATION, BUT IS RATHER OPPOSING WHAT IS INTERPRETS AS A POSSIBLE JURISDICTIONAL DISPUTE BETWEEN ITSELF AND THE APPLICANT. IN THIS REGARD, THE ATTENTION OF THE PARTIES IS DIRECTED TO SECTION 66 OF THE LABOUR RELATIONS ACT. IN THE LIGHT OF THE FOREGOING, THE BOARD DOES NOT DEEM IT NECESSARY TO HOLD A HEARING.

8. THE RESPONDENT HAS ALSO REQUESTED A HEARING OF THIS APPLICATION ON THE FOLLOWING GROUNDS:

(1) NEED FOR CLARIFICATION AND CORRECTION OF THE NAME OF THE RESPONDENT.

(2) THE QUESTION OF PROPER EVIDENCE TO SATISFY THE BOARD AS TO UNION MEMBERSHIP REQUIREMENTS.

WITH RESPECT TO THE FIRST POINT RAISED BY THE RESPONDENT, THE BOARD POINTS OUT THAT THE CORRECTION SOUGHT BY THE RESPONDENT HAS BEEN GRANTED IN A RECENT CASE BEFORE THE BOARD IN WHICH A HEARING WAS HELD, SEE THE STEED AND EVANS, A DIVISION OF STEED AND EVANS LIMITED CASE, BOARD FILE NO. 17397-69-R. THE SECOND GROUND RELIED ON BY THE RESPONDENT IN SUPPORT OF ITS REQUEST FOR A HEARING CONCERNS THE PROPER EVIDENCE TO SATISFY THE BOARD AS TO UNION MEMBERSHIP REQUIREMENTS. IT IS THE FUNCTION OF THE BOARD TO EXAMINE THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT AND TO DETERMINE WHETHER SUCH EVIDENCE OF MEMBERSHIP SATISFIES THE REQUIREMENTS OF THE LABOUR RELATIONS ACT. REFERENCE IS MADE TO THE LABOUR RELATIONS AMENDMENT ACT, 1970. THE NATURE OF THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT HAS BEEN STATED IN PARAGRAPH TWO AND IN THE EVENT OF A HEARING, THE PARTIES PRESENT WOULD NOT NORMALLY RECEIVE ANY FURTHER INFORMATION THAN THAT WHICH HAS BEEN GIVEN IN PARAGRAPH TWO. REFERENCE IS MADE TO SECTION 83 OF THE LABOUR RELATIONS ACT.

WHERE A PARTY REQUESTS A HEARING IN A CONSTRUCTION

INDUSTRY CASE, THE BOARD USUALLY GRANTS THE REQUEST IF IT APPEARS TO THE BOARD THAT IT WOULD SERVE SOME USEFUL PURPOSE. IN THE CIRCUMSTANCES OF THIS APPLICATION, THE BOARD DOES NOT DEEM IT NECESSARY TO HOLD A HEARING. REFERENCE IS MADE TO SECTION 75(9A) OF THE LABOUR RELATIONS ACT.

9. THE APPLICANT AND THE RESPONDENT HAVE SUGGESTED AN APPROPRIATE BARGAINING UNIT IN THE GEOGRAPHIC AREA OF THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND. GEOGRAPHIC AREA NUMBER FIVE SET BY THE CONSTRUCTION INDUSTRY DIVISION OF THE BOARD IN CERTIFICATION CASES CONSISTED OF THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND. ON JANUARY 1, 1970, THE REGIONAL MUNICIPALITY OF NIAGARA ACT, 1968-69, PROVIDED FOR THE INCORPORATION OF THE REGIONAL MUNICIPALITY OF NIAGARA AND FOR THE DISSOLUTION OF THE COUNTIES OF LINCOLN AND WELLAND. THE AREA FORMERLY COVERED BY THE COUNTIES OF LINCOLN AND WELLAND IS NOW COVERED BY THE REGIONAL MUNICIPALITY OF NIAGARA.

HAVING REGARD TO THE FOREGOING, THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

. . .

11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

17528-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 91, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. SYLVESTER MACDONALD CARRYING ON BUSINESS AS UPTOWN MOTOR SALES (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS H.F. IRWIN AND P.J. O'KEEFFE.

APPEARANCES AT THE HEARING: JACK HURD FOR THE APPLICANT; W.G. PHELPS AND S. MACDONALD FOR THE RESPONDENT; JOHN CAMERON FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: APRIL 28, 1970.

. . .

3. The Board further finds that all employees at Uptown Motor Sales at Cornwall, save and except foremen, those above the rank of foreman, office and sales staff, and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

4. In this case an issue arose as to whether a Statement of Desire had been forwarded to the Board in accordance with the provisions of Rule 50 of the Board's Rules of Procedure. A request by the representative of the group of employees was made to allow the Statement of Desire to be filed although it had not reached the Board prior to the terminal date. The Board reserved its decision with respect to the filing of the Statement of Desire and heard evidence concerning the origination and circulation of that Statement.

5. Mr. J. Cameron testified on behalf of the group of employees concerning the origination of the Statement of Desire. He stated that he had received a phone call on April 2nd which was the terminal date and was advised what to do. He first stated that he was approached by another dealer and then he indicated that it was an employee of another company. He was unable to state the name of the employee nor was he able to indicate whether that employee exercises managerial functions. In any event that employee instructed Mr. Cameron what had to be done, how the petition was to be made up and how the signatures were to be secured. Mr. Cameron then circulated the petition.

6. We are satisfied from the evidence that although Mr. Cameron circulated the Statement of Desire that document originated either wholly or in part by the unnamed person who made a telephone call to Mr. Cameron. In the absence of any further evidence as to the identity of that person and in the absence of any evidence from that unknown person as to the origination of the Statement of Desire, we are of the opinion that the group of employees have not established the circumstances surrounding the origination of the Statement of Desire and for that reason the Statement of Desire is not acceptable as casting doubt on the evidence of membership filed by the applicant. See Bausch & Lomb Optical Company Limited, 1969 July OLRB Mthly Rep p 478. In these circumstances the Board has assumed, but has not decided, that the Statement of Desire was properly filed. In view of our conclusion that the Statement of Desire would not cast doubt on the membership evidence, it will not be necessary to reach a conclusion with respect to the filing of the Statement of Desire.

. . .

8. A certificate will issue to the applicant.

17529-69-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 91, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. ARMATAGE MOTORS LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: O.B. Shime, Vice-Chairman and Board Members H.F. Irwin and P.J. O'Keeffe.

APPEARANCES AT THE HEARING: Jack Hurd for the applicant; R. C. Filion and L.P. Armatage for the respondent; F.R. von Veh and D. McGihon for the group of employees.

DECISION OF THE BOARD: April 28, 1970.

. . .

2. The Board further finds that all employees of the respondent at Renfrew, save and except foremen, those above the rank of foreman, office and sales staff, constitute a unit of employees of the respondent appropriate for collective bargaining.

3. In this matter a Statement of Desire was filed. It appears that during the course of working hours the persons who signed the Statement of Desire received permission from their foreman to leave the premises whereupon they left the premises as a group and attended at their lawyers office for the purpose of signing the Statement of Desire.

4. Since the Board is concerned with the voluntary wishes of the employees we are of the opinion that in these circumstances any employee who remained on the premises while the remaining employees left the premises to sign the Statement of Desire, would be subject to the scrutiny of the foreman. In these circumstances it would have been extremely difficult for an employee to refuse to attend to sign the Statement of Desire knowing that such refusal might come to the attention of Management. In addition it would appear that permission having been obtained for and on behalf of these employees that the employees would be under the impression that Management approved and consented to their actions. In these circumstances we are not prepared to accept the Statement of Desire as reflecting the voluntary wishes of the employees.

. . .

6. A certificate will issue to the applicant.

17574-69-R: Local Union 221, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. VIKING PLUMBING & HEATING LTD. (Respondent).

BEFORE: R. A. Furness, Vice-Chairman and Board Members E. Boyer and R. W. Teagle.

DECISION OF THE BOARD: April 16, 1970.

1. In this application for certification the documentary evidence of membership submitted by the applicant consists of a number of duplicate cash sheets indicating the applicant's cash receipt records for 1969 with respect to what appears to be its entire membership. An officer of the applicant has indicated by means of a red check mark which persons are affected by this application. Each sheet bears the signature of the applicant's financial secretary. These duplicate sheets, however, are not signed by any of the persons whose names appear thereon.

2. Subsection (1) of section 48 of the Board's Rules of Procedure provides, in part, that evidence of membership shall not be accepted by the Board on an application for certification unless the evidence is signed by the employee. In view of these circumstances, the Board cannot give any weight to the documentary evidence filed in support of this application (see The Moose Head House (Hamilton) case, OLRB M.R., Nov. 1961 p. 278 and the Mono Mechanical Contracting Limited case, OLRB, M.R., Oct. 1968 p. 729).

3. Since the documentary evidence of membership in the applicant does not bear the signature of the person for whom such documentary evidence of membership is filed the Board cannot give any weight to the documentary evidence of membership filed in support of this application. Accordingly, the applicant has failed to establish that it had any members at the time the application was made in any bargaining unit the Board might find appropriate for this application.

4. In the result the application is dismissed.

17602-70-R: Retail Clerks International Association (Applicant) v. CHAPPLES STORES LIMITED (Respondent).

BEFORE: J. D. O'Shea, Q.C., Vice-Chairman, and Board Members H.F. Irwin and P.J. O'Keeffe.

APPEARANCES AT THE HEARING: Clifford Evans and Roy McIntyre for the applicant, R.A. Williamson for the respondent.

DECISION OF THE BOARD: April 29, 1970.

. . .

3. The Board further finds that all employees of the respondent at Marathon, save and except branch store manager, persons above the rank of branch store manager, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

. . .

5. A certificate will issue to the applicant.

6. It is noted that the respondent requested the exclusion of "persons hired expressly for the Christmas and Easter Shopping periods, or for the store vacation period". The applicant did not agree to the exclusion of such persons. Since the exclusions sought by the respondent are not classifications which the Board normally excludes from descriptions of bargaining units and there is nothing in The Labour Relations Act which would permit the Board to deny collective bargaining to such classes of persons, the Board is unable to accede to the respondent's request. While it is recognized that persons who might be employed in the classifications which the respondent seeks to exclude are usually only employed for short periods of time, the Board must leave the question of short-term employees or probationary employees to collective bargaining between the parties. Accordingly, the Board is not prepared to exclude such persons from the bargaining unit in this matter.

INDEXED ENDORSEMENTS - TERMINATION

17457-69-R: Ovide Brunet - 400 Plouffe St. - Gatineau P.Q. (Applicant) v. Teamsters, Chauffeurs, Warehousemen, and Helpers - Local Union #91 (Respondent).

(Re: FRANCON LTD., OTTAWA)

BEFORE: J. D. O'Shea, Q.C., Vice-Chairman, and Board Members O. Hodges and H. F. Irwin.

APPEARANCES AT THE HEARING: Ovide Brunet for the applicant, W. W. Tiller for the respondent.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: April 28, 1970.

1. The applicant has applied under the provisions of section 43 of The Labour Relations Act for a declaration terminating the bargaining rights of the respondent. The document filed by the applicant in support of his application contains the signatures of 13 employees in the bargaining unit. When each of the 13 employees affixed their signatures to the document there was nothing on the document to indicate why they had signed. After the 13 employees signed the document, the following statement was written on the document:

> Dear Sir;
>
> We the above signed dump truck drivers of Francon Ltd. request the immediate de-certification of the Teamsters Local 91 who are now certified as our bargaining agents.
>
> Yours very truly

The applicant's signature then appears. None of the 13 employees who signed the document were present when the statement was written on the document.

2. Although the applicant testified that he met with the employees after the statement was written on the document and read the document to them and that they were satisfied that the document should be forwarded to the Board, we are unable to find that such viva voce evidence satisfies the requirements of section 48 of the Board's Rules of Procedure. Section 48 requires written evidence of signification by the employees that they no longer wish to be represented by a trade union. The evidence in this case is clear that at the time the signatures were affixed to the document there was nothing on the document which would signify that the employees no longer wish to be represented by the trade union. The documentary evidence therefore cannot be construed as signification in writing that the employees no longer wish to be represented by the trade union. We are unable to find that the employees in the bargaining unit have voluntarily signified in writing that they no longer wish to be represented by the trade union as required by section 43(3) of the Act.

3. The documentary evidence filed in this case is no more acceptable than a blank piece of paper signed by an employee would be acceptable as documentary evidence of membership in a trade union if it is supported by viva voce evidence that the person who signed such blank sheet of paper intended his signature to indicate his desire to become a union member. Before a document will be acceptable evidence of membership in a trade union or evidence of a person's objection to certification of a trade union or of signification by a person that he no longer wishes to be represented by a trade union, the intent of the person signing must be clear from the face of the document at the time the document was signed.

4. For the reasons set out above, we find that less than fifty per cent of the employees in the bargaining unit have voluntarily signified in writing that they no longer wish to be represented by the respondent union on March 12, 1970, the terminal date fixed for this application and the date which the Board determines under section 77(2)(j) of The Labour Relations Act to be the time for the purpose of ascertaining the number of persons who have voluntarily signified in writing that they no longer wish to be represented by the respondent union under section 43(3) of the said Act.

5. The application is therefore dismissed.

DECISION OF BOARD MEMBER H. F. IRWIN: April 28, 1970.

1. I dissent.

2. In addition to the facts set out in the majority decision is the fact that the applicant, Mr. Ovide Brunet, stated to the Board at the hearing that although he spoke English he did not write English. This accounted for the necessity for Mr. Brunet to get one of the other employees to write the statement referred to below the employees' signatures on the paper.

3. Having regard to the special circumstances of this case, including the viva voce evidence given by Mr. Brunet under oath at the hearing and which was not contradicted, I am satisfied that: (i) the employees signed the paper given them by Mr. Brunet as an indication in writing that they didn't want to continue to bargain with their employer through the respondent union; (ii) the paper was shown to them after the statement referred to above was written thereon and that they concurred in it and authorized Mr. Brunet to mail it to the Board; (iii) although the Board's Notice of Application (Form 17) was posted on the premises of the employer as directed by the Board, no employee who signed the document has informed the Board that it did not represent his views or that he had changed his mind.

4. The Board has taken a lenient view of certain actions of employees engaged in signing up other employees as union members during a union organizing campaign because of their lack of knowledge and experience in such matters. Such actions would not be condoned if engaged in by an experienced union organizer. The Board also does not consider it fatal to an application for certification if the number of the Local Union (applicant) is not shown on the application card when signed by the employee. The defect is considered to have been remedied if the number of the Local Union is written on the receipt given to the employee for money payment

BY WAY OF UNION DUES. IN ADDITION, THE BOARD PERMITS UNIONS TO FILE FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, AT THE HEARING OF THE APPLICATION FOR CERTIFICATION ALTHOUGH SECTION 6 OF THE BOARD'S RULES OF PROCEDURE REQUIRES THE FORM TO BE FILED WITH THE BOARD NOT LATER THAN THE SECOND DAY AFTER THE TERMINAL DATE. SURELY, MR. BRUNET IS ALSO ENTITLED TO SPECIAL CONSIDERATION IN ALL THE CIRCUMSTANCES OF THIS CASE.

5. FOR THE ABOVE REASONS, I AM PREPARED TO ACCEPT THE DOCUMENT FILED BY MR. BRUNET AS A VOLUNTARY SIGNIFICATION IN WRITING THAT THE EMPLOYEES WHO SIGNED IT NO LONGER WISH THE UNION TO REPRESENT THEM IN COLLECTIVE BARGAINING WITH THEIR EMPLOYER.

6. HAVING SATISFIED MYSELF ON ALL THE EVIDENCE BEFORE ME THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION AS OF MARCH 12, 1970, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF EMPLOYEES WHO HAVE SO SIGNIFIED, I WOULD HAVE DIRECTED THAT A REPRESENTATION VOTE BE CONDUCTED.

17558-69-R: GEORGE F. WAYLAND (APPLICANT) V. THE OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (RESPONDENT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (INTERVENER).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS A. B. MAIN AND F. W. MURRAY.

DECISION OF THE BOARD: APRIL 28, 1970.

1. THIS IS AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS WHICH WAS TO HAVE BEEN HEARD BY THE BOARD ON APRIL 21ST. ON APRIL 17TH THE APPLICANT REQUESTED LEAVE TO WITHDRAW ITS APPLICATION AND THE HEARING WAS ACCORDINGLY CANCELLED. BOTH THE RESPONDENT AND THE INTERVENER HAVE MADE SUBMISSIONS IN WRITING TO THE EFFECT THAT THE APPLICATION SHOULD BE DISMISSED. THE APPLICANT IN REPLY THERETO REQUESTS THE BOARD TO FOLLOW ITS USUAL PRACTICE AND TO CONSENT TO THE WITHDRAWAL.

2. THERE WAS A PRIOR APPLICATION BY THE APPLICANT FOR TERMINATION OF BARGAINING RIGHTS OF THE RESPONDENT WHICH WAS DISMISSED ON MARCH 5TH, FOLLOWING A HEARING BEFORE THE BOARD. TAKING THIS FACT INTO ACCOUNT, IT WOULD APPEAR TO BE CLEAR THAT SHOULD A THIRD APPLICATION BE MADE, IT WOULD BE OPEN TO ANY PARTY TO MAKE A REQUEST TO THE BOARD UNDER SECTION 77(2)(I) OF THE LABOUR RELATIONS

ACT. SUCH A REQUEST COULD THEN BE DEALT WITH FORMALLY BY THE BOARD AT A PROPER HEARING.

3. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD DOES NOT DEEM IT ADVISABLE IN THIS INSTANCE TO DEPART FROM ITS REGULAR PRACTICE AND, ACCORDINGLY, THE APPLICATION IS WITHDRAWN BY LEAVE OF THE BOARD.

INDEXED ENDORSEMENT - SUCCESSOR STATUS

17317-69-R: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIC-CLC (APPLICANT) v. BEEF TERMINAL LIMITED (RESPONDENT) v. BUTCHER WORKERS EMPLOYEES ASSOCIATION (PREDECESSOR TRADE UNION).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: CHARLES BORSK AND VINCENT GENTILE FOR THE APPLICANT, F. R. VON VEH AND W. F. MCCARTNEY FOR THE RESPONDENT, NO ONE FOR THE PREDECESSOR TRADE UNION.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER J.E.C. ROBINSON, Q.C.: APRIL 30, 1970.

1. THIS IS AN APPLICATION MADE UNDER SECTION 47 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE APPLICANT HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF ITS PREDECESSOR, BUTCHER WORKERS EMPLOYEES ASSOCIATION, (HEREINAFTER REFERRED TO AS THE ASSOCIATION) BY REASON OF A MERGER, AMALGAMATION OR A TRANSFER OF JURISDICTION.

2. THERE WAS FILED WITH THE BOARD AS AN EXHIBIT A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE ASSOCIATION BY WHICH THE RESPONDENT RECOGNIZES THE ASSOCIATION AS THE BARGAINING AGENT FOR ALL OF ITS EMPLOYEES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101. THE AGREEMENT WHICH IS DATED JANUARY 29, 1970 PROVIDES THAT IT IS TO REMAIN IN EFFECT FOR A TWO-YEAR PERIOD FROM OCTOBER 1, 1969 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

3. CHARLES BORSK, AN OFFICER OF THE APPLICANT TRADE UNION, TESTIFIED THAT HE MET WITH SAMEOLIN ISMAIL, THE PRESIDENT OF THE ASSOCIATION, AND ROBERT DAVIEAU, SENIOR EXECUTIVE BOARD MEMBER OF THE ASSOCIATION, IN A RESTAURANT ON OR ABOUT WEDNESDAY, JANUARY 21, 1970. AT THIS MEETING THE TWO OFFICERS OF THE ASSOCIATION AND BORSK DISCUSSED THE TRANSFERRING OF THE BARGAINING RIGHTS HELD BY

THE ASSOCIATION TO THE APPLICANT. TOWARDS THIS END THEY PREPARED A NOTICE OF A MEETING TO THE EMPLOYEES. THE NOTICE, WHICH IS DATED JANUARY 27, 1970, READS AS FOLLOWS:

> ON AUGUST 29, 1969, YOUR ASSOCIATION WAS CERTIFIED BY THE ONTARIO LABOUR RELATIONS BOARD.
>
> WE REGRET TO HAVE TO INFORM YOU THAT AFTER ALL THE MEETINGS WITH THE COMPANY, WE HAVE BEEN UNABLE TO COME UP WITH AN AGREEMENT.
>
> WE FELT THAT AFTER WE WERE CERTIFIED, WE WOULD BE IN A STRONGER POSITION TO NEGOTIATE A DECENT AGREEMENT FOR YOU. HOWEVER, THIS HAS NOT BEEN SO.
>
> WE HAVE BEEN DISAPPOINTED AND FRUSTRATED SO OFTEN THAT WE FINALLY CAME TO THE CONSLUSION THAT THE ONLY WAY WE COULD MAKE PROPER HEADWAY ON YOUR BEHALF WAS TO TRANSFER INTO THE AMALGAMATED MEAT CUTTERS.
>
> WE ARE, THEREFORE, ASKING EACH AND EVERYONE OF YOU TO ATTEND A MEETING AT THE UNION HALL, 2299 ST. CLAIR AVENUE WEST, ON THURSDAY, JANUARY 29TH RIGHT AFTER YOUR DAYS' WORK.
>
> AT THIS MEETING, A REPORT WILL BE GIVEN TO YOU, AFTER WHICH TIME YOU MAY SIGNIFY BY SECRET BALLOT WHETHER YOU WISH TO TRANSFER INTO THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN. (SAME UNION AS IN CANADA PACKERS AND SWIFTS)
>
> ISSUED BY THE FOLLOWING EXECUTIVE OFFICERS OF THE "BUTCHER EMPLOYEES' ASSOCIATION"
>
> "SAMEOLIN ISMAIL"
>
> "ROBERT F. DAVIEAU"

4. THE EVIDENCE IS THAT BORSK AND VINCENT GENTILE, A REPRESENTATIVE OF THE APPLICANT, HANDED OUT COPIES OF THE NOTICE TO EMPLOYEES AS THEY ENTERED THE PLANT PRIOR TO THE COMMENCEMENT OF WORK ON THE MORNING OF TUESDAY, JANUARY 27TH. A FEW OF THE NOTICES WERE GIVEN TO EMPLOYEES AT OTHER TIMES AND LOCATIONS THAT DAY. ACCORDING TO THE EVIDENCE, 35 TO 45 COPIES OF THE NOTICE WERE HANDED OUT TO EMPLOYEES. THE MEETING WAS HELD AT 3:15 P.M. ON JANUARY 29, 1970, AFTER WORKING HOURS IN THE UNION HALL AT 2299 ST. CLAIR AVENUE WEST. THERE WAS FILED WITH THE BOARD MINUTES RECORDING THE EVENTS OF THE MEETING WHICH WERE IDENTIFIED BY GENTILE, WHO ACTED AS RECORDING SECRETARY, AS BEING AN ACCURATE ACCOUNT OF THE CONDUCT OF THE MEETING.

5. According to the minutes, Davieau called the meeting to order. He advised those in attendance that the meeting was the result of a prior meeting held in the plant on Thursday, January 22, 1970, at which time those in attendance had voted 27 to 3 instructing the executive of the Association to transfer into the applicant union. Davieau told the 36 employees present that they now had the opportunity to decide one way or the other whether they wanted to transfer to the applicant. Borsk then addressed the meeting and outlined the policies of the applicant with respect to other companies in the same business and the difficulties facing employees of small slaughterhouses to secure the same wages and working conditions as those employed by large companies because of the fierce competition between smaller firms. Borsk stated that the only solution for workers in the small plants was to organize into one union and present a united front and identical agreements to the smaller plants so that those plants could not play one off against the other. According to the minutes, a question period followed during which differences in wages and working conditions between the smaller and larger plants were discussed as well as the question as to the financial assistance the employees would receive in the event of a strike. Borsk thereupon explained the secret ballot to the employees present and two scrutineers were appointed to distribute and collect the ballots. The result of the vote which was taken by secret ballot was 35 employees favoured a transfer to the applicant and one employee opposed the transfer, for a total of 36 employees who cast ballots. The form of the ballots which were filed with the Board reads:

BEING AN EMPLOYEE OF BEEF TERMINAL LIMITED AND REPRESENTED BY THE BUTCHER WORKERS EMPLOYEES ASSOCIATION -	Y E S	
ARE YOU IN FAVOUR OF TRANSFERRING INTO THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF N.A.?	N O	

The meeting adjourned at 4:30 p.m.

6. W. F. McCartney, the plant superintendent of the respondent, testified that as of January 30, 1970 there were 73 employees in the bargaining unit covered by the collective agreement in effect between the respondent and the Association. According to the evidence of Borsk, deductions of union dues were made by the respondent for 66 employees covering the month of December 1969. Further, according to McCartney, about half a dozen employees reported to work at times during the day when Borsk and Gentile were not distributing the notices of the meeting to be held on January 20, 1970.

7. Counsel for the respondent cited to the Board the Astgen

ET AL. V. SMITH ET AL. CASE, 68 CLLC 509 (C.A. 69 CLLC 797). IN THAT CASE, THE EXECUTIVES OF THE INTERNATIONAL UNION OF MINE MILL AND SMELTER WORKERS (HEREINAFTER REFERRED TO AS MINE MILL) AND THE UNITED STEELWORKERS OF AMERICA (HEREINAFTER REFERRED TO AS STEEL) ENTERED INTO A MERGER AGREEMENT WHEREBY THE SEPARATE EXISTENCE OF MINE MILL WAS TERMINATED AND THE ASSETS AND MEMBERSHIP OF ITS LOCALS WERE TRANSFERRED TO STEEL. THE EXECUTIVE MEMBERS OF MINE MILL WHO APPROVED AND EXECUTED THE MERGER AGREEMENT UNDERTOOK TO PRESENT THE MERGER TO ITS MEMBERSHIP IN THE FORM OF A REFERENDUM. ON THE REFERENDUM LOCAL 598 OF MINE MILL, WITH A MEMBERSHIP OF APPROXIMATELY 2,500, REJECTED THE MERGER BY A MAJORITY VOTE. THE OVERALL VOTE OF THE MEMBERSHIP WHICH TOTALLED SOME 12,000, HOWEVER, FAVOURED THE MERGER BY A TWO TO ONE MAJORITY. ON THE STRENGTH OF THE VOTE THE MERGER AGREEMENT WAS DECLARED EFFECTIVE. LOCAL 598 CONTENDED THAT THE MERGER PROCEEDINGS WERE INVALID AS BEING CONTRARY TO THE CONSTITUTION AND REFUSED TO ACCEDE TO ITS DISSOLUTION. ITS OFFICERS WERE THEN DISMISSED FROM OFFICE BY THE PARENT UNION AND THE LOCAL PLACED UNDER ADMINISTRATION. THE OFFICER OF LOCAL 598 THEREUPON BROUGHT REPRESENTATIVE ACTION TO HAVE THE MERGER DECLARED NOT BINDING ON LOCAL 598 OR IN THE ALTERNATIVE TO HAVE IT DECLARED NULL AND VOID.

8. KING, J. IN THE ONTARIO HIGH COURT ALLOWED THE ACTION TO SUCCEED. HE HELD THAT WHATEVER STEPS HAD TO BE TAKEN TO EFFECT THE MERGER THEY HAD TO COMPLY WITH THE CONSTITUTION WHICH GOVERNED THE RIGHTS, PRIVILEGES AND DUTIES OF THE OFFICERS AND MEMBERS OF BOTH THE LOCAL AND ITS PARENT UNION. WHERE, AS IN THE CASE BEFORE HIM, PROVISIONS REGARDING MERGER WERE LACKING, AN AMENDMENT TO THE CONSTITUTION EMPOWERING THE UNION TO ENTER INTO THE MERGER AGREEMENT WAS NECESSARY. IN THE ABSENCE OF CONSTITUTIONAL AUTHORIZATION, AN UNINCORPORATED ASSOCIATION, SUCH AS A TRADE UNION, CANNOT TERMINATE ITS EXISTENCE AND TRANSFER ITS PROPERTY AND MEMBERSHIP WITHOUT A VOTE BY ITS MEMBERS WHICH IS UNANIMOUS OR NEARLY UNANIMOUS APPROVING SUCH ACTION. A REFERENDUM WHICH SOUGHT TO DEAL WITH THE MERGER DIRECTLY INSTEAD OF BY AMENDING THE CONSTITUTION TO PROVIDE FOR THE MERGER WAS INEFFECTIVE WHERE ALMOST ONE-THIRD OF THE MEMBERSHIP VOTED AGAINST THE MERGER. MR. JUSTICE KING THUS HELD THAT THE FAILURE TO FIRST AMEND THE CONSTITUTION TO PERMIT THE UNION TO ENTER THE MERGER AGREEMENT RENDERED THE MERGER INVALID.

9. AN APPEAL TO THE ONTARIO COURT OF APPEAL WAS DISMISSED. EVANS, J.A. FOR THE COURT (LASKIN, J.A. DISSENTING) HELD THAT THE OFFICERS OF MINE MILL WERE NOT EMPOWERED BY THE CONSTITUTION TO AGREE TO THE MERGER. SUCH AN AGREEMENT AFFECTED EACH AND EVERY MEMBER AND COULD BE ACCOMPLISHED ONLY BY THE UNANIMOUS CONCURRENCE OF EVERY MEMBER. THE UNION DID NOT HAVE THAT UNANIMITY. MOREOVER, THE MEMBERS HAD NOT GIVEN THE EXECUTIVE THE AUTHORITY TO ENTER INTO AN AGREEMENT, THE RESULT OF WHICH WOULD BE THE DISSOLUTION OF MINE MILL IN CANADA. EVANS, J.A. WENT ON TO HOLD THAT WHILE THE CONSTITUTION OF THE UNION MIGHT BE AMENDED, THE PROPOSED

MERGER WENT SO FAR AS TO VARY THE OBJECTS AND PURPOSES OF THE ASSOCIATION. WHILE ADMITTING THAT THE PROPOSED MERGER MIGHT BE BENEFICIAL TO THE UNION MOVEMENT GENERALLY, HE STATED THAT THE RIGHTS OF THE INDIVIDUAL MEMBERS COULD NOT BE DISREGARDED.

10. COUNSEL FOR THE RESPONDENT NOTED THAT THE CONSTITUTION OF THE ASSOCIATION WAS NOT IN EVIDENCE. COUNSEL ADVISED, HOWEVER, THAT THE CONSTITUTION OF THE APPLICANT WAS ON FILE IN THE BOARD'S RECORDS. COUNSEL PURPORTED TO QUOTE A NUMBER OF PROVISIONS FROM THE LATTER CONSTITUTION. (A COPY OF THE CONSTITUTION WAS NOT ENTERED AS AN EXHIBIT AT THE HEARING.) COUNSEL ASSERTS THAT THE PROVISIONS WHICH HE QUOTED HAD TO BE COMPLIED WITH BEFORE THERE COULD BE A TRANSFER OF JURISDICTION FROM THE ASSOCIATION TO THE APPLICANT. COUNSEL SUBMITS THAT THERE IS NO EVIDENCE THAT THERE WAS, IN FACT, COMPLIANCE WITH THESE PROVISIONS.

11. COUNSEL FOR THE RESPONDENT ALSO REFERRED TO THE DECISION OF THIS BOARD IN THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF HAMILTON CASE, 63 CLLC 1119. THAT CASE WAS AN APPLICATION FOR A DECLARATION UNDER SECTION 47 OF THE LABOUR RELATIONS ACT THAT THE APPLICANT WAS THE SUCCESSOR OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO. 138 AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF HAMILTON. IN THAT CASE, THE BOARD MADE THE FOLLOWING STATEMENT WITH RESPECT TO THE REQUIREMENTS THAT MUST BE MET BEFORE IT WILL MAKE A SUCCESSOR DECLARATION AT P. 1119:

> BEFORE MAKING SUCH A DECLARATION THE BOARD HAS THE POWER TO INQUIRE INTO THE EVENTS WHICH LED TO THE ACQUISITION OF THE SUCCESSOR STATUS BY THE TRADE UNION AND TO MAKE A DECLARATORY ORDER ON THE BASIS OF SUCH EVIDENCE.
>
> THE PRACTICE OF THE BOARD HAS BEEN TO INQUIRE WHETHER THE PREDECESSOR TRADE UNION HAS EXHIBITED THE DESIRE AND HAS TAKEN THE NECESSARY STEPS TO EFFECT THE MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION. THE BOARD MUST ALSO BE SATISFIED THAT A MAJORITY OF THE EMPLOYEES IN THE BARGAINING UNIT CONCERNED, HAVE GIVEN THEIR APPROVAL TO THE ACTION OF THE PREDECESSOR TRADE UNION. THE SUCCESSOR TRADE UNION MUST ALSO HAVE EXHIBITED A DESIRE AND TAKEN THE NECESSARY STEPS TO MERGE OR AMALGAMATE WITH OR ACCEPT THE TRANSFER OF JURISDICTION OVER THE BARGAINING UNIT.
>
> THE BOARD MUST BE SATISFIED THAT THE PARTIES HAVE SUBSTANTIALLY MET THESE REQUIREMENTS AND THAT THE EMPLOYEES CONCERNED ARE NOT OPPOSED TO THE MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION.

12. We would mention that in the instant application the collective agreement in effect between the Respondent and the Association provides that all employees upon the expiry of their probationary period become and remain members of the Association during the lifetime of the agreement as a condition of employment. According to the evidence, between 66 and 73 employees of the Respondent were both in the bargaining unit and members of the Association on January 27, 1970, the date that the notice of the meeting of January 29, 1970 was handed to from 35 to 45 employees. In other words, it would appear that, at best, little more than half of the members of the bargaining unit received direct notice of the meeting. On this basis alone, i.e. the absence of sufficient notice to the employees concerned, the Board is not prepared to make the successor declaration sought by the applicant.

13. Having denied the instant application on the basis of the insufficiency of notice to the employees concerned, it is not necessary for the Board to make any determination as to the applicability of the Astgen et al. v. Smith et al. Case (supra) to the facts and circumstances of the instant case. We would point out, however, that there was no evidence before us as to the constitutional requirements, if any, of the Association with regard to the transfer of jurisdiction to another trade union. Moreover, according to the evidence, only 36 bargaining unit employees were at the meeting of January 27, 1970 when the bargaining rights held by the Association purportedly were transferred to the applicant, and of that number 35 persons, that is, what appears to have been slightly less than half of the total bargaining unit, or more importantly members of the intervener, voted in favour of the transfer of jurisdiction.

14. In the result, the application is dismissed.

DECISION OF BOARD MEMBER O. HODGES: April 30, 1970.

1. I dissent.

2. I find that the majority of the employees were notified in writing of the transfer meeting that was called on instructions given to the Association Executive by a prior meeting of its members, and that by secret ballot at the transfer meeting the majority of the members present, being also in this case a majority of employees, voted by secret ballot to transfer to the applicant successor union.

1. There is evidence of considerable interest and activity by these employees in collective bargaining.

2. They have an Association and were certified on August 29th, 1969, by this Board. A collective agreement was signed on January 29th, 1970, by this Association with the respondent employer.

Two days before this signing, a leaflet issued over the names of the President and the Chief Executive Officer of the Association stated in part, "We regret to have to inform you that after all the meetings with the company, we have been unable to come up with an agreement." The leaflet went on to complain, "We have been disappointed and frustrated so often."

The Association held a meeting in the Venus Restaurant on January 22nd, which was attended by at least 30 employees, of which 27 voted to instruct the Executive of the Association to transfer into the applicant union.

3. Subsequently on January 22nd or 23rd, the President of the Association and his senior Executive Officer met with International Representative, Charles Borsk, of the applicant union. Together they drew up the text of the leaflet which was distributed at the plant gates on January 27th by International Representative Charles Borsk and Victor Gentile, another International Representative of the applicant union. Some of these leaflets were taken into the plant by the senior Executive Officer of the Association, for distribution at noon. This is the leaflet appearing in paragraph 3 of the majority decision.

3. The Hydro-Electric Commission of the City of Hamilton Case, 63 CLLC 1119, cited by the respondent, was referred to by my colleagues in their majority decision in the instant case as "a Board statement with respect to the requirements that must be met before it will make a successor declaration." These sections of the Hydro case are:

A. "Whether the predecessor trade union has exhibited the desire and has taken the necessary steps to effect the merger, amalgamation or transfer of jurisdiction."

B. "The Board must also be satisfied that a majority of the employees in the bargaining unit concerned, have given their approval to the action of the predecessor trade union."

C. "The successor trade union must also have exhibited a desire and taken the necessary steps to merge or amalgamate with or accept the transfer of jurisdiction over the bargaining unit."

D. "THE BOARD MUST BE SATISFIED THAT THE PARTIES HAVE SUBSTANTIALLY MET THESE REQUIREMENTS", AND

E. "THAT THE MAJORITY CONCERNED ARE NOT OPPOSED TO THE MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION."

4. WITH RESPECT TO REQUIREMENTS 'A' AND 'B' ABOVE, THE PREDECESSOR TRADE UNION IN ALL OF ITS ACTIONS LEAVES NO DOUBT AS TO WHERE IT WANTS TO GO AND WHAT IT DID TO TRY AND GET THERE.

5. CONCERNING REQUIREMENTS OF 'C' ABOVE, THE SUCCESSOR TRADE UNION MADE IT ABUNDANTLY CLEAR TO THE OFFICERS OF THE ASSOCIATION, ITS MEMBERS AND THE EMPLOYEES, OF ITS WILLINGNESS TO ACCEPT THE RESPONSIBILITY THAT WOULD RESULT FROM THE TRANSFER OF JURISDICTION. THIS IS CLEAR THROUGH THE EVIDENCE OF PARTICIPATION BY INTERNATIONAL REPRESENTATIVES OF THE APPLICANT UNION, THEIR ASSISTANCE GIVEN TO THE OFFICERS OF THE ASSOCIATION, THEIR ATTENDANCE AT PLANT GATES TO DISTRIBUTE THE ASSOCIATION LEAFLET AND THEIR ATTENDANCE AT THE ASSOCIATION MEMBERSHIP MEETING.

6. THE APPLICATION FOR SUCCESSOR STATUS ON FORM 18 BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC, IS AN ACT THAT SHOULD REQUIRE NO FURTHER PROOF OF INTEREST AND DESIRE. HOWEVER, IN THIS CASE INTERNATIONAL REPRESENTATIVES OF THE APPLICANT UNION APPEARED AND TESTIFIED AT THE HEARING THAT HAD BEEN REQUESTED BY THE RESPONDENT. IT IS SIGNIFICANT THAT NEITHER THE APPLICANT UNION NOR THE PREDECESSOR ASSOCIATION HAD REQUESTED A HEARING, AND THAT THE PREDECESSOR TRADE UNION MADE NO APPEARANCE AT THE HEARING. IT IS THE EXPERIENCE OF THE BOARD THAT MOST CASES SUCH AS THIS ARE SETTLED WITHOUT A HEARING.

7. CONCERNING 'B' ABOVE, I AM SATISFIED THAT THE PARTIES HAVE SUBSTANTIALLY MET ALL OF THE REQUIREMENTS OF THIS BOARD. THE PARTIES ARE NOT CHARGED TO MAKE THE REQUIREMENTS ABSOLUTELY - BUT SUBSTANTIALLY.

8. DEALING WITH REQUIREMENT 'E' ABOVE, I AM SATISFIED THAT THE POSTING OF FORM 20 FROM FEBRUARY 6TH TO THE TERMINAL DATE ON FEBRUARY 12TH GAVE EMPLOYEES AN OPPORTUNITY TO MAKE REPRESENTATIONS IN OPPOSITION (PARA. 4 OF FORM 20). THERE WERE NO REPRESENTATIONS; NO EMPLOYEES APPEARED AT THE HEARING TO SPEAK AGAINST THE TRANSFER OF JURISDICTION. SINCE FORM 20 IS TAKEN AS SUFFICIENT NOTICE TO ALLOW FOR REPRESENTATIONS TO THE BOARD IN OPPOSITION TO THE APPLICATION, IT FOLLOWS REASONABLY THAT A FAILURE TO APPEAR REPRESENTS AGREEMENT WITH THE APPLICATION.

9. IN VIEW OF THE ACCEPTANCE OF A POSTED NOTICE (FORM 20) AS BEING SUFFICIENT FOR THE PURPOSES OF THE BOARD, IT IS MY VIEW THAT THE DISTRIBUTION OF LEAFLETS TO A MAJORITY OF THE EMPLOYEES WOULD BE EVEN MORE EFFECTIVE THAN THE POSTED NOTICE IN BRINGING A MESSAGE TO THE ATTENTION OF A MAJORITY, IF NOT ALL, OF THE EMPLOYEES. I AM SATISFIED THAT IN THE TWO DAYS BETWEEN THE DISTRIBUTION OF THE LEAFLETS AND THE HOLDING OF THE TRANSFER MEETING WHICH THE LEAFLET ANNOUNCED, ALL EMPLOYEES WOULD HAVE RECEIVED NOTICE OF THE TIME, PLACE AND PURPOSE OF THE TRANSFER MEETING.

10. THE ASTGEN ET AL. V SMITH ET AL. CASE, 68 CLLC 509 (C.A. 69 CLLC 797) CONCERNS A SITUATION WHERE A MAJORITY OF MEMBERS OF ONE OF THE TRADE UNION LOCALS OF THE MERGING NATIONAL AND INTERNATIONAL UNIONS OBJECTED TO THE MERGER OF THEIR PARENT UNION WITH ANOTHER UNION. IN THE INSTANT CASE ONLY ONE DISSENTING VOTE OF THE MEMBERS OF AN INDEPENDENT ASSOCIATION OF EMPLOYEES OF A SINGLE EMPLOYER AT ONE LOCATION WAS CAST AGAINST A TRANSFER OF JURISDICTION TO AN ESTABLISHED AND RECOGNIZED TRADE UNION BARGAINING WITH MANY OTHER EMPLOYERS IN THE SAME INDUSTRY. FURTHERMORE, NO EMPLOYEES TOOK THE OPPORTUNITY AFFORDED BY THE BOARD POSTING OF FORM 20 TO REGISTER AN OBJECTION, AN INVITATION FOR DISSENT BEFORE FINAL DETERMINATION ABSENT IN THE ASTGEN-SMITH CASE.

11. WHILE THE EMPLOYER IS INVITED BY WAY OF NOTICE OF THE HEARING TO ASCERTAIN THE FACTS AND TO MAKE REPRESENTATIONS, SECTION 47 IS PRIMARILY CONCERNED WITH THE RELATIONSHIP BETWEEN TRADE UNIONS THAT HAVE DECIDED TO GET TOGETHER. THIS IS A MUCH TO BE DESIRED LABOUR RELATIONS TREND IN THE TROUBLESOME AREA OF JURISDICTIONAL DISPUTES AND CLEARLY IN THE PUBLIC INTEREST, AS WELL AS IN THE INTEREST OF THE UNIONS AND THE EMPLOYEES. PROCEDURES IN THIS AREA MUST BE AS FREE FROM LEGALITIES AS IS POSSIBLE, AND WHEN THERE IS NO OBJECTION AT ALL FROM EMPLOYEES, AS IN THIS CASE, THE QUESTION OF NOTICE APPEARS TO BE AN UNNECESSARY BAR TO THE APPLICATION, PARTICULARLY WHEN EVIDENCE OF WRITTEN NOTICE TO A MAJORITY HAS A HISTORY OF ACCEPTANCE IN SIMILAR CASES BEFORE THIS BOARD.

12. I AM SATISFIED THAT THE EMPLOYEES WERE GIVEN WRITTEN NOTICE OF THE MEETING AT WHICH THE TRANSFER WAS VOTED UPON, THAT A MAJORITY VOTED BY SECRET BALLOT IN FAVOUR OF THE TRANSFER, THAT NO EMPLOYEES OBJECTED TO THE TRANSFER AT THE HEARING, AND THAT THE SUCCESSOR TRADE UNION WOULD RESPONSBILY DISCHARGE ALL THE OBLIGATIONS A COLLECTIVE BARGAINING AGENT IS CALLED UPON TO ASSUME, AS INDEED THIS SUCCESSOR TRADE UNION NOW DOES FOR THOUSANDS OF ITS MEMBERS IN THE VERY INDUSTRY IN WHICH THE EMPLOYER IS ENGAGED.

13. FOR ALL OF THESE REASONS I WOULD ALLOW THE TRANSFER OF JURISDICTION SOUGHT BY THE TRADE UNIONS CONCERNED.

INDEXED ENDORSEMENT - LOCK-OUT UNLAWFUL

17468-69-U: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ROBERT MCALPINE LTD. (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: H. A. HERRON FOR THE APPLICANT; F. R. VON VEH, W. GIBSON AND GEORGE BECIGNEUL FOR THE RESPONDENT.

DECISION OF THE BOARD April 1, 1970.

1. The applicant has applied to the Board for a declaration that a lockout called or authorized by the respondent is unlawful.

2. The alleged lockout commenced on February 2, 1970. The work stoppage ceased on February 10, 1970 and the employees concerned in this application have been employed by the respondent from that day to and including the date of hearing of this application.

3. In the Ellis Don Limited case, O.L.R.B. Monthly Report May 1968, p.202, which dealt with an application for a declaration that a lockout was unlawful, the Board stated that both on reason and in principle the Board should apply to lock-out declarations the policies that it has developed with respect to strike declarations. Those policies are outlined in the following extract from paragraph 7 of the Ellis Don case:

> "On an application for a declaration that a strike is unlawful the Board will not issue the declaration where the strike has been settled before the application comes on for hearing, unless special circumstances exist. This policy of the Board is described at length in such cases as the McNamara-Raymond Case, 61 C.L.L.C. par 16,192 and the National Refractories Ltd. Case,63 C.L.L.C. par. 16,276. In the latter case the Board said:
>
> > ...The Board has viewed strike or lock-out declarations primarily as instruments to aid in the settlement of labour disputes. Accordingly it has exercised its discretion in making declarations for the purpose of encouraging the parties to resolve the issues in dispute. (emphasis added)"

4. In view of the foregoing, there being no special circumstances present, the Board, without deciding whether the action of the respondent commencing February 2, 1970 constituted a lock-out, dismisses the application.

Indexed Endorsements - Prosecution

17540-69-U: Ottawa Typographical Union, Number 102 (Applicant) v. The Ottawa Citizen, A Division of Southham Press Limited (Respondent).

BEFORE: J. D. O'Shea, Q.C., Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: J. P. NELLIGAN, J.P. DUFFY AND R. J. KEARNEY FOR THE APPLICANT, COLIN MORLEY AND S. G. ROBERTS FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 27, 1970.

. . .

2. THE APPLICANT HAS APPLIED FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT FOR AN ALLEGED VIOLATION OF SECTION 59(1) OF THE LABOUR RELATIONS ACT. THE FACTS OF THIS CASE ARE NOT IN DISPUTE. THE APPLICANT WAS RECENTLY CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT AND THE APPLICANT AND THE RESPONDENT ARE CURRENTLY BARGAINING FOR A COLLECTIVE AGREEMENT. PRIOR TO THE CERTIFICATION OF THE APPLICANT, THE RESPONDENT'S EMPLOYEES WITH WHOM WE ARE HERE CONCERNED WERE REPRESENTED BY OTTAWA PRINTING CRAFTS UNION.

3. THE APPLICANT ALLEGES THAT THE RESPONDENT HAS ALTERED TERMS OR CONDITIONS OF EMPLOYMENT OF THE RESPONDENT'S EMPLOYEES WHO HAD PREVIOUSLY BEEN REPRESENTED BY OTTAWA PRINTING CRAFTS UNION DURING THE COURSE OF BARGAINING WITH THE APPLICANT CONTRARY TO THE PROVISIONS OF SECTION 59(1) OF THE ACT.

4. IT WAS THE APPLICANT'S POSITION THAT THE TERMS OR CONDITIONS OF EMPLOYMENT AS EVIDENCED BY THE COLLECTIVE AGREEMENT AND THE MANNER IN WHICH IT WAS APPLIED COULD NOT BE CHANGED BY THE RESPONDENT WITHOUT THE CONSENT OF THE UNION DURING THE COURSE OF BARGAINING.

5. THE RELEVANT PROVISIONS OF THE COLLECTIVE AGREEMENT READ AS FOLLOWS:

> SECTION 1(1)
>
> . . . THE UNION AGREES THAT IN CONSIDERATION OF THESE COVENANTS ENTERED INTO WITH THE PUBLISHER, THE UNION SHALL AT ALL TIMES DURING THE LIFE OF THIS AGREEMENT DISCHARGE THE OBLIGATION IMPOSED UPON IT BY FURNISHING MEN, OVER WHOM THE UNION HAS JURISDICTION, CAPABLE OF PERFORMING THE WORK REQUIRED IN THE COMPOSING ROOM OF THE PUBLISHER, AT STRAIGHT TIME RATES, TO FILL ALL REGULAR POSITIONS CALLED FOR BY THE PUBLISHER.
>
> SECTION 1(7)
>
> SHOULD THE UNION BE UNABLE AT ANY TIME FOR ANY REASON WHATSOEVER TO FILL THE NUMBER OF POSITIONS

CALLED FOR BY THE PUBLISHER WITH MEMBERS OF THE UNION TO EFFICIENTLY CARRY ON THE REGULAR WORK OF THE PUBLISHER, THE PUBLISHER SHALL HAVE THE RIGHT TO EMPLOY UNDER PERMIT, SUCH ADDITIONAL JOURNEYMEN AS MAY BE NECESSARY TO FILL ALL REGULAR POSITIONS. IT IS AGREED THAT JOURNEYMEN UNDER SUCH PERMITS SHALL BE GOVERNED BY THE PROVISIONS OF THIS AGREEMENT IN RESPECT OF HOURS, WAGES AND UNION LAWS. THE PERMIT MUST BE GRANTED WITHIN 12 HOURS OF ITS BEING REQUESTED.

SECTION 4(4)

THE UNION RECOGNIZES ITS OBLIGATION TO PROVIDE MEN FOR OVERTIME WORK BEFORE AND/OR AFTER REGULAR SHIFT HOURS AS REQUIRED BY THE PUBLISHER. WHEN OVERTIME IS SO REQUIRED BY THE PUBLISHER AND THE NEEDS HAVE NOT BEEN FILLED, IT SHALL BE THE DUTY OF THE CHAPEL CHAIRMAN UPON DEMAND BY THE FOREMAN TO PROVIDE EMPLOYEES FROM THE CURRENT SHIFT IN THE PARTICULAR CLASSIFICATIONS, BY LOT IF NECESSARY, TO WORK SUCH REQUIRED OVERTIME. THE UNION SHALL MAKE NO RULES LIMITING THE OBLIGATION OF THE EMPLOYEES TO WORK OVERTIME OR REGULAR TIME AS REQUIRED BY THE PUBLISHER. SHOULD THE UNION CHARGE THAT AN EMPLOYEE IS BEING REQUIRED TO WORK OVERTIME UNNECESSARILY, THIS SHALL BE CONSIDERED A GRIEVANCE TO BE ADJUSTED IN ACCORDANCE WITH THE PROVISIONS OF THIS CONTRACT. IT IS MUTUALLY UNDERSTOOD THAT OVERTIME IS NOT TO BE REQUIRED SOLELY AS A MEANS OF AVOIDING THE EMPLOYMENT OF SUBSTITUTES.

SECTION 7(1)

ALL MEMBERS WITH ONE YEAR OF CONTINUOUS SERVICE AS AT JULY 1, 1967 OR 1968, AS THE CASE MAY BE, WILL RECEIVE TWO WEEKS (TEN WORKING DAYS) VACATION WITH PAY. ALL MEMBERS WITH FIVE YEARS OF CONTINUOUS SERVICE AS AT JULY 1, 1967 OR 1968, AS THE CASE MAY BE, WILL RECEIVE THREE WEEKS (FIFTEEN WORKING DAYS) VACATION WITH PAY. ALL MEMBERS WITH 25 YEARS OF CONTINUOUS SERVICE AS OF JULY 1, 1968, WILL RECEIVE FOUR WEEKS (TWENTY WORKING DAYS) VACATION WITH PAY.

SECTION 7(6)

IT IS AGREED THAT A MEMBER WILL NOT BE REQUIRED TO TAKE HIS VACATION PRIOR TO MAY 15 OR AFTER SEPTEMBER 30, EXCEPT THAT IF A SPECIAL OPERATIONAL REQUIREMENT ARISES, VACATIONS MAY BE SPREAD BEYOND SUCH PERIOD TO DATES ARRANGED BY MUTUAL CONSENT BETWEEN THE PUBLISHER AND THE UNION. WHEREVER POSSIBLE, TAKING INTO CONSIDERATION THE BREVITY OF THE NORMAL HOLIDAY SEASON AND THE WELFARE OF THE MEMBERS, IT WILL BE PERMISSIBLE TO TAKE THESE THREE WEEKS CONCURRENTLY. WHERE THIS IS FOUND NOT TO BE POSSIBLE THE THIRD WEEK SHALL BE TAKEN AT A TIME MUTUALLY SATISFACTORY TO THE PUBLISHER AND TO THE MEMBER.

SECTION 7(7)

A MEMBER ELIGIBLE FOR FOUR WEEKS VACATION MAY TAKE TWO WEEKS BETWEEN MAY 15 AND SEPTEMBER 30, AND THE THIRD AND FOURTH WEEKS BEFORE MAY 15 OR AFTER SEPTEMBER 30. A VACATION LIST COVERING THE THIRD AND FOURTH WEEKS OF MEMBERS ELIGIBLE FOR FOUR WEEKS WILL BE SUBMITTED BY THE UNION TO THE PUBLISHER FOR APPROVAL BY DECEMBER 15 OF THE PRECEDING YEAR AND SEVEN DAYS IS TO BE ALLOWED FOR SUCH APPROVAL.

SECTION 7(8)

A COMPLETE VACATION LIST COVERING THE WHOLE YEAR WILL BE SUBMITTED BY THE UNION TO THE PUBLISHER FOR APPROVAL BY FEBRUARY 28 IN EACH YEAR AND 15 DAYS IS TO BE ALLOWED FOR SUCH APPROVAL.

6. THE EVIDENCE ALSO ESTABLISHED THAT PRIOR TO 1969 IT WAS NOT UNCOMMON FOR AN EMPLOYEE TO WORK TWELVE HOURS A DAY, SIX DAYS A WEEK. HOWEVER, WITH THE IMPLEMENTATION OF THE EMPLOYMENT STANDARDS ACT IN 1969 THE EMPLOYEES NOW WORKED A MAXIMUM OF EIGHT HOURS A DAY OR FORTY-EIGHT HOURS A WEEK.

7. EVEN THOUGH OVERTIME IS STILL BEING WORKED BY THE EMPLOYEES (IN THE REDUCED AMOUNTS) THE COMPANY IS REQUIRED TO SUB-CONTRACT CERTAIN OF THE WORK WHICH WAS PREVIOUSLY PERFORMED BY THE EMPLOYEES IN THE BARGAINING UNIT.

8. UNDER THE VACATION PROVISIONS CONTAINED IN SECTION 7 OF THE COLLECTIVE AGREEMENT WITH OTTAWA PRINTING CRAFTS UNION, THE UNION SUBMITTED A VACATION LIST FOR THE WHOLE YEAR. IN 1968 AND 1969, AS MANY

AS SIX EMPLOYEES WERE ABSENT ON VACATION DURING THE TEN TWO-WEEK VACATION PERIODS FROM MAY 15 TO SEPTEMBER 30. WHEN THE UNION SUBMITTED THE VACATION LIST IN 1968 AND 1969, THE COMPANY INITIALLY TOOK THE POSITION THAT IT DID NOT WISH TO HAVE MORE THAN FIVE EMPLOYEES ABSENT ON VACATION IN ANY ONE WEEK. HOWEVER, AFTER NEGOTIATION THE COMPANY AGREED TO PERMIT AS MANY AS SIX EMPLOYEES TO BE ABSENT.

9. ON FEBRUARY 28, 1970, A SPOKESMAN FOR THE EMPLOYEES SUBMITTED A LIST SIMILAR TO THAT SUBMITTED IN PREVIOUS YEARS UNDER THE OLD COLLECTIVE AGREEMENT WHEREIN SIX EMPLOYEES WERE SCHEDULED TO BE ABSENT ON VACATION DURING NINE OF THE TEN VACATION PERIODS. WHEN THIS LIST WAS SUBMITTED FOR THE COMPANY'S APPROVAL, THE COMPANY, AFTER CONSIDERING THELIST, RETURNED IT TO THE EMPLOYEE ON MARCH 6 AND ADVISED THE EMPLOYEE THAT THE COMPANY COULD NOT AGREE TO THE ABSENCE OF MORE THAN FIVE EMPLOYEES AT A TIME. ON MARCH 14, THE EMPLOYEES' SPOKESMAN MET WITH THE COMPANY AND POINTED OUT THAT SINCE THERE WERE NOW FIFTY-SIX PERSONS ELIGIBLE FOR VACATION, THIS WAS A GREATER NUMBER THAN THE FIFTY-TWO PERSONS WHO HAD BEEN ELIGIBLE IN 1969 AND ACCORDINGLY THE MANNING REQUIREMENTS OF THE COMPANY WOULD BE MORE READILY MET. THE COMPANY WAS ALSO ADVISED THAT IF THE COMPANY REFUSED TO AGREE TO THE LIST AS SUBMITTED THE EMPLOYEES WOULD HAVE NO ALTERNATIVE BUT TO SEEK CONSENT TO PROSECUTE SINCE ARBITRATION WAS NOT AVAILABLE TO SETTLE THE ISSUE SINCE THE PARTIES WERE NEGOTIATING THEIR FIRST AGREEMENT.

10. IT WAS ARGUED ON BEHALF OF THE EMPLOYEES THAT THERE WAS NO OTHER REDRESS AVAILABLE TO THE EMPLOYEES BUT TO SEEK CONSENT TO PROSECUTE. IT WAS THE EMPLOYEES' POSITION THAT SECTION 59(1) OF THE LABOUR RELATIONS ACT WAS INTENDED TO MAINTAIN THE STATUS QUO AND THAT MANAGEMENT DOES NOT HAVE THE RIGHT TO MODIFY THE WORKING CONDITIONS THAT HAD BEEN ESTABLISHED PRIOR TO THE SERVICE OF THE NOTICE TO BARGAIN UNDER SECTION 11 OF THE ACT. IT WAS THE APPLICANT'S POSITION THAT THE EMPLOYEES WERE ENTITLED TO TAKE THEIR VACATION DURING THE TEN TWO-WEEK VACATION PERIODS IN ACCORDANCE WITH PAST PRACTICE.

11. IT WAS ARGUED ON BEHALF OF THE COMPANY THAT BECAUSE OF THE FACT THAT THE MAN HOURS AVAILABLE TO THE RESPONDENT HAVE BEEN REDUCED AS A RESULT OF THE REDUCED OVERTIME WORKED BY THE EMPLOYEES, THE RESPONDENT WOULD FIND IT NECESSARY TO MAINTAIN MORE EMPLOYEES AT WORK DURING THE VACATION PERIOD IN ORDER TO LOOK AFTER THE STAFFING REQUIREMENTS.

12. ON THE FACTS OF THIS CASE, WE FIND THAT THE PAST PRACTICE WITH RESPECT TO VACATIONS IS AS SET OUT IN THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN OTTAWA PRINTING CRAFTS UNION AND THE RESPONDENT. UNDER THAT AGREEMENT THE VACATION LIST COVERING THE WHOLE YEAR WAS SUBMITTED TO THE RESPONDENT FOR APPROVAL. THIS WAS

DONE WITH RESPECT TO THE 1970 VACATIONS. THE FACT THAT THE PARTIES HAD NEGOTIATED A LIST IN PREVIOUS YEARS WHICH PERMITTED AS MANY AS SIX PERSONS TO BE ABSENT AT ONE TIME DOES NOT NECESSARILY MEAN THAT THE PARTIES MUST NEGOTIATE A SIMILAR COMPROMISE IN SUBSEQUENT YEARS. WE DO NOT FIND THAT THE RESPONDENT'S POSITION TO LIMIT THE NUMBER OF PERSONS ON VACATION AT ANY ONE TIME TO FIVE IS EITHER UNREASONABLE OR ARBITRARY. IT IS TO BE NOTED THAT THE RESPONDENT IN PREVIOUS YEARS HAD ALSO TAKEN THE POSITION INITIALLY THAT THE VACATION LIST SHOULD NOT PERMIT MORE THAN FIVE PERSONS TO BE ABSENT AT ANY ONE TIME. SECTION 7(6) OF THE COLLECTIVE AGREEMENT CONTEMPLATES THAT ". . . IF A SPECIAL OPERATIONAL REQUIREMENT ARISES, VACATIONS MAY BE SPREAD BEYOND SUCH PERIOD TO DATES ARRANGED BY MUTUAL CONSENT . . . ". THE REDUCED OVERTIME WORKED BY THE EMPLOYEES WAS NOT WITHIN THE CONTEMPLATION OF THE PARTIES AT THE TIME THE OTTAWA PRINTING CRAFTS UNION AGREEMENT WAS NEGOTIATED IN 1966. AGAIN, AT THE TIME THE AGREEMENT WAS NEGOTIATED, THE COMPANY WAS ABLE TO PERFORM ALL OF ITS REQUIRED WORK AND DID NOT FIND IT NECESSARY TO SUB-CONTRACT ANY WORK TO OUTSIDE PRINTERS. THESE FACTORS ARE NEW ELEMENTS WHICH MAY BE CHARACTERIZED AS SPECIAL OPERATIONAL REQUIREMENTS WHICH DIRECTLY BEAR ON THE STAFFING REQUIREMENTS OF THE RESPONDENT'S COMPOSING ROOM DURING VACATION PERIODS.

13. IN ADDITION, SINCE THE RIGHT OF THE EMPLOYEES TO TAKE THEIR VACATION DURING THE TEN VACATION PERIOD REFERRED TO IN THE COLLECTIVE AGREEMENT IS CONDITIONAL AND SINCE THERE IS NO INFLEXIBLE PROVISION WITH RESPECT TO VACATIONS, WE CANNOT FIND IN THE CIRCUMSTANCES OF THIS CASE THAT THE RESPONDENT HAS ALTERED ANY TERM OR CONDITION OF EMPLOYMENT CONTRARY TO SECTION 59(1) OF THE ACT. THE RESPONDENT HAS CONSIDERED THE VACATION LIST SUBMITTED IN ACCORDANCE WITH PAST PRACTICE AND HAS SUGGESTED CHANGES AS IT HAS PREVIOUSLY DONE. BECAUSE OF CHANGED CIRCUMSTANCES, THE EMPLOYEES ARE NOT AUTOMATICALLY ENTITLED TO OBTAIN THE SAME COMPROMISE WHICH WAS NEGOTIATED IN PREVIOUS YEARS.

14. FOR THE REASONS SET OUT ABOVE, THE APPLICATION FOR CONSENT TO PROSECUTE IS ACCORDINGLY DISMISSED.

INDEXED ENDORSEMENTS - SECTION 65

16200-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. BRAYSHAWS STEEL LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING; IAN G. SCOTT, STEPHEN T. GOUDGE HENRY GAREAU AND VAUGHN MCGREGOR FOR THE COMPLAINANT, G. B. WEILER, Q.C., R. D. WEILER AND G. M. ADAMS FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: APRIL 23, 1970.

1. This is a complaint for relief made by the complainant on May 21, 1969 under section 65 of The Labour Relations Act on behalf of thirty-four employees who were discharged by the respondent on Friday, May 16, 1969.

2. The complaint in this matter is amended to include an allegation that the respondent's activities which are particularized in the complaint violated the provisions of section 50(c) of the Act.

3. A chronological review of the facts which immediately preceded the events complained of may be found in the decision of the Board dated February 26, 1970 in an application for certification made by the United Steelworkers of America for certain inside or shop employees employed by Brayshaws Steel Limited, Board File 16048-69-R. Shopmen's Local Union No. 743 of the International Association of Bridge, Structural and Ornamental Iron Workers (affiliated with the AFL-CIO, CLC) intervened in the certification application and alleged that the Steelworkers application was untimely in view of the existence of a collective agreement between the respondent and Local 743 which had been executed on April 12, 1969. For the reasons given in the decision above referred to, the Board in the certification application found "that in all the circumstances of this case, the collective agreement was executed in the shadow of the applicant's organizing campaign with a view to defeat the representation of the respondent's employees by the applicant". The Board further found that the agreement dated April 12, 1969 was therefore not a bar to the Steelworkers application for certification and a representation vote was accordingly directed between the Steelworkers and Local 743 which vote has been taken but as of the date of this decision has not been counted.

4. On Friday, April 11, 1969, the thirty-four aggrieved persons were employed by Northwestern Structural Steel Limited at the respondent's premises. Apparently, the respondent had an agreement with Northwestern to provide labour to perform the respondent's work on the respondent's premises. Their employment with Northwestern was terminated on Friday, April 11, 1969, however, they continued to be employed on the respondent's premises and became employees of the respondent on Monday, April 14, 1969. When they became the respondent's employees, the respondent took the position that they were included in the bargaining unit covered by the collective agreement which the respondent had voluntarily entered into with Local 743 on April 12, 1969. On May 14, 1969, the company posted the following notice:

> All Shop Employees
>
> <u>COLLECTIVE AGREEMENT</u>
>
> It would appear there is some misunderstanding of the working conditions in the plant and yard and we wish to make sure that all employees are aware of the situation as it exists today.

ON APRIL 12TH, 1969, AN AGREEMENT WENT INTO FORCE BETWEEN LOCAL 743 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL, ORNAMENTAL IRON WORKERS AND BRAYSHAWS STEEL LIMITED AND MOST EMPLOYEES WERE HIRED ON MONDAY, APRIL 14TH. THIS AGREEMENT EXPIRES ON DECEMBER 31, 1971.

ONE OF THE TERMS OF THIS AGREEMENT, WHICH IS PRESENTLY EXHIBITED ON THE NOTICE BOARD, CALLS FOR ALL EMPLOYEES TO BECOME A MEMBER OF THE ABOVE UNION NOT LATER THAN THE 31ST DAY OF EMPLOYMENT.

NO ONE CAN COMPEL ANY EMPLOYEE TO BELONG TO A UNION IF DOES NOT WISH TO JOIN, BUT WE SHOULD MAKE CLEAR THAT THE COMPANY IS BOUND BY THE TERMS OF THE CONTRACT AND WHEN NOTIFIED BY THE UNION THAT AN EMPLOYEE IS NOT IN GOOD STANDING THAT EMPLOYEE WILL BE RELEASED.

UNTIL NOW THE COMPANY HAS PROTECTED THE RIGHTS OF ALL EMPLOYEES UNDER THE TERMS OF THE AGREEMENT RELATING TO EMPLOYEE BENEFITS, WAGES AND LENGTH OF SERVICE WITH THE TWO PREVIOUS EMPLOYERS BUT SHOULD WE BE COMPELLED TO RELEASE AN EMPLOYEE UNDER SECTION 4, THE COMPANY WILL BE IN NO POSITION TO PROTECT THESE RIGHTS FURTHER.

5. ON MAY 15, 1969, THE STEELWORKERS REPRESENTATIVE WROTE THE FOLLOWING LETTER TO THE PRESIDENT OF THE RESPONDENT:

CONFIRMING OUT TELEPHONE CONVERSATION OF THIS MORNING, WE UNDERSTAND THAT A NOTICE HAS BEEN POSTED IN THE SHOP ADVISING THE EMPLOYEES THAT THEY ARE REQUIRED TO BECOME MEMBERS OF THE SHOPMEN'S LOCAL UNION NO. 743 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS.

AS YOU ARE AWARE, OUR UNION HAS MADE APPLICATION FOR CERTIFICATION FOR THE EMPLOYEES OF YOUR FIRM AS WE REPRESENT THE MAJORITY OF THIS GROUP.

IF ANY DISCIPLINARY ACTION IS TAKEN BY YOUR COMPANY OR ANY EMPLOYEES ARE DISCHARGED BECAUSE OF THEIR REFUSAL TO BECOME MEMBERS OF LOCAL 743, WE WILL INITIATE CHARGES OF UNFAIR LABOUR PRACTICE AGAINST YOUR COMPANY IN ACCORDANCE WITH THE LABOUR RELATIONS ACT OF ONTARIO.

> We would propose to you that the question of what union the employees belong to, the matter of union security, and as to whom has the bargaining rights, be left in abeyance until The Labour Relations Board of Ontario has made its decision.

6. On May 16, 1969, the President of the Respondent replied to the Steelworkers letter as follows:

> We acknowledge receipt of your letter dated May 15, 1969 in connection with the requirement that all Brayshaws Steel hourly rated shop employees are required to join Local Union No. 743 of the International Association of Bridge, Structural and Ornamental Iron Workers.
>
> It is the view of our solicitor that we are obliged to comply with Section 4B of our collective agreement which states that: "Upon receipt of a written notice from the Union that an employee has not acquired membership in good standing therein as provided for in this section, the Company shall discharge such employee and such employee shall not be re-employed during the life of the agreement unless or until he complies with the provision of this section."
>
> Since the Agreement was signed on April 12, 1969, any employee who has not joined the Union by the 31st day following the effective date or by May 15th, 1969 must be laid off.
>
> Since the Labour Relations Board of Ontario have not ruled this Agreement with the Ironworkers invalid to this date, we are obliged by law to adhere to the terms of the contract.

7. On May 16, 1969, the District Representative of Iron Workers Union Local 743 delivered a letter to the Respondent which reads as follows:

> In accordance with Section 4 of our existing agreement the following employees have not applied for membership in the International Association of Bridge, Structural & Ornamental Iron Workers, Local 743; therefore we are requesting that you comply with the above mentioned section.

J. Debek	V. McGregor	W. Phair
R. Day	J. Tonts	M. Lebel
J. Safar	H. Closs	L. Valente
C. Heinoaho	F. Coda	R. Kulmala
V. Rowe	E. Plumridge	S. Shranski
K. Herrmann	R. Pitkanen	D. Abbott
C. Symons	J. Lombara	A. White
A. Sagure	J. Freeman	D. Gooder
H. Fischer	A. Menegon	D. Pauluzzo
J. Antiuk	P. Gustafson	W. Brewer
N. Gustafson	D. Buzzie	S. Sanzo
N. Pilat	M. Pasquali	K. Kemppainen

Please be advised that should there by any other employees not named, this will also apply to them

8. Finally, on May 16, 1969, the respondent's president caused the following notice of dismissal to be given to each of the aggrieved persons at the end of their shift:

> The Business Representative of Local 743 of the International Association of Bridge, Structural, Ornamental Iron Workers who have a legal collective agreement with Brayshaws Steel have advised us in writing that you have not joined the Iron Workers Union as of this date.
>
> As we are bound by the terms of Section 4 of the Contract we regret to advise you that effective 4:30 P.M. May 16, 1969 (to-day) we are compelled to release you from our employment.

9. The employees who were discharged caused a picket line to be established in front of the respondent's premises in protest of their discharge.

10. In order to limit the loss suffered by the respondent and the aggrieved persons, a compromise arrangement was entered into during the second week of June 1969. Under this arrangement each of the aggrieved persons was offered a job with Great Lakes Steel Products Limited (the respondent's parent company). The work for Great Lakes was to be performed in the same job classifications as they previously held with the respondent and they were to perform their work on the respondent's premises. Apparently, the respondent and Great Lakes had entered into an agreement whereby Great Lakes would provide labour for the respondent. In accordance with this arrangement, Great Lakes wrote the following letter to each of the aggrieved persons:

> This will confirm you are being hired by Great Lakes Steel Products Limited in the same trade classification in which you were employed by Brayshaws Steel Limited on May 15, 1969.

> YOUR CONDITIONS OF EMPLOYMENT ARE AS COVERED BY THE COLLECTIVE AGREEMENT IN FORCE BETWEEN OUR COMPANY AND LOCAL 743 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS.
>
> ACCEPTANCE OF EMPLOYMENT WITH GREAT LAKES STEEL PRODUCTS LIMITED SHOULD IN NO WAY PREJUDICE YOU IN ANY MATTER INVOLVING BRAYSHAWS STEEL LIMITED.
>
> THERE IS SUFFICIENT BACKLOG OF WORK TO ASSURE YOU OF STEADY EMPLOYMENT OF AT LEAST SIX WEEKS DURATION.

11. IT IS TO BE NOTED THAT GREAT LAKES AND IRON WORKERS LOCAL 743 WERE PARTIES TO A COLLECTIVE AGREEMENT SIMILAR TO THE AGREEMENT WHICH LOCAL 743 AND THE RESPONDENT HAD ENTERED INTO ON APRIL 12, 1969. HOWEVER, THE PROVISIONS OF THE GREAT LAKES COLLECTIVE AGREEMENT WERE NOT ENFORCED WITH RESPECT TO THE AGGRIEVED PERSONS IN THAT THE AGGRIEVED PERSONS WERE NOT REQUIRED TO BECOME MEMBERS OF LOCAL 743. IN ADDITION, WHEN LAY-OFFS WERE NECESSARY AT THE RESPONDENT'S PLANT, THE RESPONDENT TREATED ITS EMPLOYEES AND THE GREAT LAKES EMPLOYEES AS A SINGLE BARGAINING UNIT WITH A COMMON SENIORITY LIST AND THE LAY-OFFS WERE MADE ON THE BASIS OF THE COMMON SENIORITY LIST. THE RESULT WAS THAT IRON WORKERS WERE LAID OFF WHILE STEELWORKERS EMPLOYED BY GREAT LAKES WERE RETAINED TO PERFORM THE RESPONDENT'S WORK. NO GRIEVANCES WERE FILED BY LOCAL 743 WITH RESPECT TO SUCH LAY-OFFS.

12. THE RESPONDENT TOOK THE POSITION THAT THE DISCHARGES ON MAY 16, 1969 WERE CARRIED OUT PURSUANT TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT THAT IT HAD SIGNED WITH LOCAL 743. THE RESPONDENT ARGUED THAT SINCE THE BOARD IN ITS DECISION OF FEBRUARY 26, 1970 HAS FOUND THAT THE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 743 WAS A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(c) OF THE ACT, ANY ACTIONS TAKEN BY THE RESPONDENT PURSUANT TO THE PROVISIONS OF THAT AGREEMENT CANNOT BE SAID TO BE CONTRARY TO THE LABOUR RELATIONS ACT. THE RESPONDENT THEREFORE SUBMITTED THAT THE COMPLAINT SHOULD BE DISMISSED.

13. THE CENTRAL ISSUE IN THIS CASE IS WHAT EFFECT, IF ANY, DID THE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND LOCAL 743 HAVE WITH RESPECT TO THE AGGRIEVED PERSONS ON MAY 16, 1969, HAVING REGARD TO THE BOARD'S FINDINGS THAT IT WAS EXECUTED IN THE SHADOW OF THE STEELWORKERS ORGANIZING CAMPAIGN WITH A VIEW TO DEFEAT THE STEELWORKERS APPLICATION FOR CERTIFICATION WHICH HAD BEEN FILED ON MARCH 21, 1969. IN ORDER TO MAKE THIS DETERMINATION, WE MUST FIRST DETERMINE THE EFFECT OF THE BOARD'S DECISION DATED FEBRUARY 26, 1970, WHEREIN THE BOARD FOUND THAT WHILE THE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND LOCAL 743 ON APRIL 12, 1969, WAS A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(c) OF THE ACT, IT WAS, HOWEVER, NOT A BAR TO THE STEELWORKERS APPLICATION FOR CERTIFICATION SINCE IT HAD BEEN EXECUTED IN THE SHADOW OF THE STEELWORKERS ORGANIZING CAMPAIGN WITH A VIEW TO DEFEAT THE REPRESENTATION OF THE RESPONDENT'S EMPLOYEES BY THE STEELWORKERS.

14. THE AGREEMENT DATED APRIL 12, 1969 COMPLIED WITH THE REQUISITES OF THE DEFINITION SECTION OF SECTION 1(1)(c) OF THE LABOUR RELATIONS ACT SINCE IT WAS AN AGREEMENT IN WRITING BETWEEN AN EMPLOYER AND A TRADE UNION THAT HAD BARGAINING RIGHTS FOR THE EMPLOYER'S EMPLOYEES AND THE SAID AGREEMENT CONTAINED PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES AND DUTIES OF THE EMPLOYER, THE TRADE UNION AND THE EMPLOYEES. SINCE ALL THE ELEMENTS WHICH ARE SET OUT IN THE DEFINITION SECTION OF SECTION 1(1)(c) OF THE ACT WERE PRESENT, THE BOARD HAD NO ALTERNATIVE THAN TO M AKE THE FINDING IT DID IN ITS EARLIER DECISION THAT THE AGREEMENT WAS A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(c) OF THE ACT. HOWEVER, THIS DECISION IS A PREREQUISITE TO MAKING A DETERMINATION THAT THE COLLECTIVE AGREEMENT WAS EXECUTED IN THE SHADOW OF THE APPLICANT'S ORGANIZING CAMPAIGN. IF THE DOCUMENT THAT WAS ENTERED INTO BETWEEN THE RESPONDENT AND LOCAL 743 COULD NOT BE CHARACTERIZED AS A COLLECTIVE AGREEMENT, THEN, OF COURSE, THERE WOULD BE NO NECESSITY FOR THE BOARD TO FIND THAT IT WAS EXECUTED IN THE SHADOW OF AN ORGANIZING CAMPAIGN SINCE IT WOULD HAVE NO EFFECT ON THE TIMELINESS OF THE STEELWORKERS APPLICATION FOR CERTIFICATION.

15. IT HAS BEEN THE BOARD'S CONSISTENT PRACTICE FOR MORE THAN TWENTY YEARS TO REFUSE TO HOLD THAT A COLLECTIVE AGREEMENT THAT HAS BEEN ENTERED INTO IN THE SHADOW OF ANOTHER UNION'S ORGANIZATIONAL CAMPAIGN WITH A VIEW TO DEFEAT ANOTHER UNION'S EFFORTS IS A BAR TO THAT UNION'S APPLICATION FOR CERTIFICATION (SEE Brown's Bread Case, 46 CLLC ¶16,433).

16. IN A CASE WHERE THE EMPLOYEES ARE REPRESENTED BY A TRADE UNION, SECTION 5 OF THE ACT CREATES A TWO-MONTH OPEN PERIOD DURING WHICH ANOTHER TRADE UNION MAY APPLY TO BE CERTIFIED AS THE BARGAINING AGENT FOR THE EMPLOYEES CONCERNED. THIS TWO-MONTH PERIOD CANNOT BE FORECLOSED. IF THE EMPLOYER AND THE INCUMBENT TRADE UNION SIGN A NEW COLLECTIVE AGREEMENT AT THE OUTSET OF THE TWO-MONTH OPEN PERIOD, ANOTHER TRADE UNION MAY STILL MAKE A TIMELY APPLICATION FOR CERTIFICATION OR THE EMPLOYEES MAY APPLY TO TERMINATE THE BARGAINING RIGHTS OF THE TRADE UNION DURING THE TWO-MONTH OPEN PERIOD. IN THE INSTANT CASE, LOCAL 743 AND THE RESPONDENT HAD ENTEREDINTO A COLLECTIVE AGREEMENT IN 1956. THE RESPONDENT DID NOT HAVE ANY EMPLOYEES FOR APPROXIMATELY SIX YEARS PRIOR TO APRIL 1969. IT COULD NOT BE SAID THAT THE COLLECTIVE AGREEMENT WHICH HAD BEEN ENTERED INTO PRIOR TO 1962 CONTINUED IN OPERATION UNTIL 1969 IN THESE CIRCUMSTANCES. SINCE THE BOARD FOUND IN ITS EARLIER DECISION THAT LOCAL 743 HAD NOT ABANDONED ITS BARGAINING RIGHTS, IT HAD THE RIGHT TO BARGAIN WITH THE RESPONDENT FOR A RENEWAL OF THE COLLECTIVE AGREEMENT AT SUCH TIME THAT THE RESPONDENT EMPLOYED EMPLOYEES IN THE BARGAINING UNIT.

17. HAD THE RESPONDENT EMPLOYED EMPLOYEES IN APRIL 1969 AND HAD LOCAL 743 BECOME AWARE OF SUCH EMPLOYEES AND SERVED THE RESPONDENT WITH NOTICE TO BARGAIN AND HAD LOCAL 743 AND THE RESPONDENT NEGOTIATED A COLLECTIVE AGREEMENT WITHOUT KNOWLEDGE OF THE STEELWORKERS CAMPAIGN TO

ORGANIZE THE RESPONDENT'S EMPLOYEES, IT COULD NOT BE SAID THAT THE COLLECTIVE AGREEMENT WAS ENTERED INTO WITH A VIEW TO DEFEAT THE STEELWORKERS CAMPAIGN AND THE COLLECTIVE AGREEMENT THUS ENTERED INTO WOULD HAVE ACTED AS A BAR TO THE SUBSEQUENT APPLICATION OF THE STEELWORKERS. HOWEVER, SUCH ARE NOT THE FACTS OF THIS CASE.

18. IN ORDER TO DETERMINE WHETHER A COLLECTIVE AGREEMENT IS A BAR TO AN APPLICATION FOR CERTIFICATION, THE ELEMENT OF GOOD FAITH MUST EXIST. WHERE PARTIES HAVE KNOWLEDGE OF ANOTHER UNION'S ORGANIZING CAMPAIGN AND WITH UNDUE HASTE ENTER INTO A COLLECTIVE AGREEMENT WITH A VIEW TO DEFEAT THAT CAMPAIGN, THE ELEMENT OF GOOD FAITH IS ABSENT. AS STATED ABOVE, SECTION 5 OF THE ACT PROVIDES STATUTORY LIMITS DURING WHICH A UNION MAY APPLY TO DISPLACE AN INCUMBENT UNION. AFTER THE TWO-MONTH OPEN PERIOD, SECTION 46 OF THE ACT ALSO RESTRICTS THE RIGHT TO DISPLACE AN INCUMBENT UNION. THE FACTS OF THE INSTANT CASE, HOWEVER, ARE VERY UNUSUAL. USUALLY, WHEN PARTIES BARGAIN FOR A RENEWAL OF A COLLECTIVE AGREEMENT THERE IS NO HIATUS IN THEIR RELATIONSHIP AND THEIR RELATIONSHIP IS USUALLY ONE OF INTENSIVE ACTIVITY UNTIL SUCH TIME AS A NEW COLLECTIVE AGREEMENT IS ENTERED INTO. IN THE INSTANT CASE, BECAUSE THERE WERE NO EMPLOYEES IN THE BARGAINING UNIT, THE RELATIONSHIP BETWEEN LOCAL 743 AND THE RESPONDENT WAS VIRTUALLY DORMANT FOR ABOUT SIX YEARS. HAD LOCAL 743 AND THE RESPONDENT BARGAINED IN GOOD FAITH AS REQUIRED BY SECTION 12 OF THE ACT AND ENTERED INTO A COLLECTIVE AGREEMENT BEFORE THE STEELWORKERS CAMPAIGN COMMENCED OR WITHOUT KNOWLEDGE OF SUCH CAMPAIGN, THAT COLLECTIVE AGREEMENT WOULD HAVE BEEN A BAR TO A SUBSEQUENT APPLICATION BY THE STEELWORKERS. HOWEVER, GOOD FAITH BARGAINING DID NOT TAKE PLACE. WITH KNOWLEDGE OF THE STEELWORKERS APPLICATION WITH RESPECT TO THE NORTHWESTERN EMPLOYEES AND IN CONTEMPLATION OF THE NORTHWESTERN EMPLOYEES BEING TRANSFERRED TO THE RESPONDENT, THE RESPONDENT ARRANGED TO ENTER INTO A COLLECTIVE AGREEMENT WITH LOCAL 743 WHICH WOULD COVER THE NORTHWESTERN EMPLOYEES IMMEDIATELY ON THEIR BEING TRANSFERRED TO THE RESPONDENT. THE BOARD IN ITS DECISION OF FEBRUARY 26, 1970 FOUND THAT THIS COLLECTIVE AGREEMENT WAS EXECUTED IN THE SHADOW OF THE STEELWORKERS CAMPAIGN WITH A VIEW TO DEFEAT THE REPRESENTATION OF THE RESPONDENT'S EMPLOYEES BY THE STEELWORKERS. THIS FINDING IS TANTAMOUNT TO A FINDING THAT THE COLLECTIVE AGREEMENT WAS NOT NEGOTIATED IN GOOD FAITH. THIS IS EVIDENCED BY THE PRECIPITOUS HASTE WITH WHICH THE COLLECTIVE AGREEMENT WAS ENTERED INTO (SEE Silver Town Mines Limited Case, OLRB Monthly Report, August 1964, p. 232, and Essex Health Association Case, OLRB Monthly Report, January 1968, p. 974). IN THESE CIRCUMSTANCES, THE BOARD FOUND THAT THE COLLECTIVE AGREEMENT WAS NOT A BAR TO THE STEELWORKERS APPLICATION FOR CERTIFICATION. THE EFFECT OF THIS FINDING IS THAT THE EMPLOYEES IN THE BARGAINING UNIT COVERED BY THE COLLECTIVE AGREEMENT WERE NOT BOUND BY THE COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 5(1) OF THE ACT. SINCE THE EMPLOYEES IN THE BARGAINING UNIT WERE NOT BOUND BY THE COLLECTIVE AGREEMENT, THE STEELWORKERS APPLICATION FOR CERTIFICATION AS BARGAINING AGENT FOR THE RESPONDENT'S EMPLOYEES WHICH WAS MADE ON APRIL 18, 1969 WAS HELD TO BE A TIMELY APPLICATION UNDER SECTION 5(1) OF THE ACT.

If the April 12th collective agreement was not binding upon the employees on April 18, 1969, it therefore follows that the collective agreement was not binding upon the employees on May 16, 1969 when the aggrieved persons were discharged because they refused to join Local 743 as required by the terms of that collective agreement, since the application for certification that had been made on April 18th was still pending on May 16th.

19. In the circumstances of this case, we cannot find that the respondent acted in good faith when it complied with the terms of the April 12th collective agreement. As can be seen from the above facts, the collective agreement was entered into to thwart the Steelworkers attempt to represent the aggrieved persons. The respondent not only cooperated with Local 743 in enforcing the collective agreement, but in addition the timing of the events leading to the discharge would also tend to indicate that the respondent was carrying out its own plans rather than being forced to dismiss the aggrieved persons who did not wish to be represented by Local 743. The collective agreement was voluntarily entered into by the respondent in a precipitous manner. The respondent made no attempt to delay the implementation of the terms of the collective agreement and the discharges were effected at the earliest opportunity. We therefore find that the respondent did not effect the discharges unwillingly.

20. The April 12th collective agreement relied on by the respondent is repugnant to the spirit and intent of The Labour Relations Act because of the manner in which and the purposes for which it was entered into. A collective agreement negotiated pursuant to the provisions of the Act should be for the purpose of providing for the terms and conditions of employment in accordance with the will of the majority of the employees in the bargaining unit. The collective agreement of April 12th was entered into to defeat the will of the majority of the employees in the bargaining unit and to provide conditions for the termination of their employment. The respondent was not an innocent party to these events. The respondent entered the collective agreement with full knowledge of the Steelworkers attempts to represent these employees and with full knowledge of the effect the collective agreement would likely have on the employment status of the aggrieved persons. We must accordingly conclude that the resulting discharges were the effect intended by the respondent. Our findings in this regard are reinforced by the evidence of the undue haste exhibited by the respondent in entering into the collective agreement and in effecting the discharges.

21. We must accordingly find that the respondent wrongfully discharged the aggrieved persons on May 16, 1969. Since the April 12th collective agreement was not binding upon the aggrieved persons,

THE RESPONDENT DID NOT HAVE THE RIGHT TO INSIST THAT THEY COMPLY WITH THE TERMS OF THE COLLECTIVE AGREEMENT AND BY DOING SO THE RESPONDENT CONTRAVENED THE PROVISIONS OF SECTION 50(a) AND (c) OF THE ACT.

22. WE MUST ACCORDINGLY FIND THAT THE COMPLAINANT HAS SATISFIED US THAT THE AGGRIEVED PERSONS WERE DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(a) AND (c) OF THE ACT.

23. WE THEREFORE DETERMINE THAT THE RESPONDENT SHALL REINSTATE EACH OF THE AGGRIEVED PERSONS FORTHWITH IN THE POSITIONS HELD BY THEM AT THE TIME OF THEIR DISCHARGE. WE FURTHER DETERMINE THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF THE LOSS OF EARNINGS SUSTAINED BY EACH OF THE AGGRIEVED PERSONS BY REASON OF THEIR HAVING BEEN DISCHARGED CONTRARY TO THE ACT BETWEEN THE DATE OF THEIR DISCHARGE AND THE DATE OF THEIR REINSTATEMENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT REFERRED TO ABOVE WITHIN FOURTEEN DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO THE AMOUNT TO BE PAID TO THE AGGRIEVED PERSONS.

DECISION OF BOARD MEMBER F. W. MURRAY: APRIL 23, 1970.

1. SINCE I AM BOUND BY THE FINDINGS OF THE MAJORITY IN THE BOARD'S DECISION OF FEBRUARY 26, 1970 (FILE NO. 16048-69-R) AND PARTICULARLY THE FINDING IN THAT DECISION THAT THE AGREEMENT OF APRIL 12, 1969, BETWEEN THE RESPONDENT AND LOCAL 743 WAS EXECUTED IN THE SHADOW OF THE APPLICANT'S ORGANIZING CAMPAIGN AND WAS THEREFORE NOT A BAR TO THE APPLICATION, I AM ACCORDINGLY BOUND TO CONCLUDE IN VIEW OF ALL OF THE EVIDENCE TO RESTRICT THE REMEDY FOR THE AGGRIEVED PERSONS TO REINSTATEMENT AS OF THE DATE OF THIS DECISION.

2. IN MAKING THIS DETERMINATION I DO NOT AGREE WITH ALL OF THE FINDINGS AND STATEMENTS MADE BY THE MAJORITY IN THIS CASE. WHILE I WOULD AGREE THAT THE RESPONDENT WAS NOT AN INNOCENT PARTY TO THE EVENTS I WOULD NOT CONCLUDE THAT ITS ACTION IN CARRYING OUT THE TERMS OF THE AGREEMENT DURING APRIL AND MAY 1969 SHOULD BE INTERPRETED AS A SINISTER ACT DESIGNED TO DEFEAT THE WILL OF THE MAJORITY OF THE EMPLOYEES.

3. THE RESPONDENT, LIKE MANY COMPANIES IN OR ASSOCIATED WITH THE CONSTRUCTION INDUSTRY, (I HAVE HERE IN MIND THE FACT THAT THE COMPANY HAS ERECTION OR INSTALLATION OPERATIONS WHEREIN IT MAINTAINS A CONTINUING BARGAINING RELATIONSHIP WITH ANOTHER LOCAL OF THE IRON WORKERS) FOUND ITSELF IN THE MIDDLE OF A DISPUTE BETWEEN TWO UNIONS AND COULD ANTICIPATE CONTINUED FRUSTRATION IN ITS OPERATIONS BY WAY OF FUTURE JURISDICTIONAL DISPUTES THAT SO FREQUENTLY OCCUR IN THIS INDUSTRY.

4. I would find that the aggrieved persons were discharged by the respondent contrary to the provisions of section 50(a) and (c) of the Act, but having regard for all of the evidence presented in this case I would also find that the remedy should be restricted to reinstatement as of the date of this decision.

16490-69-U: United Steelworkers of America (Complainant) v. CHAIRTEX MANUFACTURING LIMITED (Respondent).
- and -
16449-69-U: United Steelworkers of America (Complainant) v. CHAIRTEX MANUFACTURING LIMITED (Respondent).
- and -
16419-69-U: United Steelworkers of America (Complainant) v. CHAIRTEX MANUFACTURING LIMITED (Respondent).

BEFORE: Rory F. Egan, Vice-Chairman and Board Members P. J. O'Keeffe and J.E.C. Robinson, Q.C.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER J.E.C. ROBINSON: April 17, 1970.

1. In its decision dated January 12, 1970, as amended by its further decision of February 5, 1970, the Board made a determination. The relevant portions of which are as follows:

(a) Manuel Lima shall be forthwith reinstated in the same position or a like position thereto as he held on the date of his termination. It is to be noted that Lazarus Beltsidis and Jean Rentero do not seek reinstatement.

(b) As compensation for loss of wages from July 8, 1969 to July 29, 1969 when new employment obtained, the respondent forthwith shall pay Lazarus Beltsidis the sum of $200.00.

(c) As compensation for lost wages from July 8, 1969 until October 2, 1969, the respondent forthwith shall pay Manuel Lima the sum of $630.00.

(d) As compensation for lost wages from July 8, 1969 to August 25, 1969, after which date he makes no claim for compensation, the respondent forthwith shall pay to Jean Rentero the sum of $650.00.

2. In a letter dated March 2, 1970, the complainant stated that the respondent had not and apparently refused to comply with the Board's determination of January 12th as amended and requested the Board to file the determination in the office of the Registrar of the

SUPREME COURT. THE REQUEST WAS MADE PURSUANT TO SECTION 65(5) OF THE LABOUR RELATIONS ACT. THAT SECTION IS IN THE FOLLOWING TERMS:

> 65(5) WHERE THE EMPLOYER OR OTHER PERSON OR THE TRADE UNION HAS FAILED TO COMPLY WITH ANY OF THE TERMS OF THE DETERMINATION, ANY EMPLOYER, PERSON OR TRADE UNION AFFECTED BY THE DETERMINATION MAY, AFTER THE EXPIRATION OF FOURTEEN DAYS FROM THE DATE OF THE RELEASE OF THE DETERMINATION OR THE DATE PROVIDED IN THE DETERMINATION FOR COMPLIANCE, WHICHEVER IS LATER, NOTIFY THE BOARD IN WRITING OF SUCH FAILURE, AND THEREUPON THE BOARD SHALL FILE IN THE OFFICE OF THE REGISTRAR OF THE SUPREME COURT A COPY OF THE DETERMINATION, EXCLUSIVE OF THE REASONS, IF ANY, THEREFOR, IN THE PRESCRIBED FORM, WHEREUPON THE DETERMINATION SHALL BE ENTERED IN THE SAME WAY AS A JUDGMENT OR ORDER OF THAT COURT AND IS ENFORCEABLE AS SUCH.

3. THE RESPONDENT IN A LETTER TO THE BOARD ALSO DATED MARCH 2, 1970, ADVISED THAT IT HAD FORWARDED TO THE SOLICITORS FOR THE COMPLAINANT CHEQUES IN THE AMOUNTS DIRECTED BY THE BOARD LESS INCOME TAX AND PENSION PLAN DEDUCTIONS. THESE TWO LETTERS WERE FOLLOWED BY FURTHER LETTERS FROM EACH PARTY SETTING FORTH THEIR RESPECTIVE POSITIONS AND ARGUMENTS.

4. THE RESPONDENT MAINTAINS THAT IT HAS COMPLIED WITH THE DECISION OF THE BOARD IN TENDERING PAYMENT ON THE ABOVE TERMS AND THAT IT IS REQUIRED BY LAW TO DEDUCT INCOME TAX AND PENSION PLAN ASSESSMENTS. PAYMENT AS DEMANDED BY THE COMPLAINANT, THE RESPONDENT ARGUES, WOULD REQUIRE IT TO CONTRAVENE THE INCOME TAX ACT.

5. THE COMPLAINANT ARGUES THAT THE RESPONDENT IS BOUND TO PAY TO THE EMPLOYEES CONCERNED THE TOTAL AMOUNTS SET FORTH IN THE DECISION OF THE BOARD AND THAT THE PROPOSED DEDUCTIONS OUGHT NOT TO BE MADE BY THE RESPONDENT. THE COMPLAINANT SUBMITS THAT THE BOARD'S ORDER OF COMPENSATION IS IN THE NATURE OF DAMAGES AND THAT THE QUESTION OF INCOME TAX AND PENSION DEDUCTIONS ARE IRRELEVANT.

6. THE COMPLAINANT FURTHER MAINTAINS THAT THE ACTION OF FILING THE DETERMINATION IN THE SUPREME COURT IS A MINISTERIAL ACT REQUIRED OF THE BOARD UPON THE NOTIFICATION OF A FAILURE TO COMPLY. THAT IS TO SAY THAT IN THE SUBMISSION OF THE COMPLAINANT, THE BOARD HAS NO DISCRETION IN THE MATTER AND MUST COMPLY WITH THE ACT UPON NOTIFICATION OF A FAILURE TO COMPLY WITH THE DETERMINATION.

7. THE BOARD CANNOT AGREE WITH THE FOREGOING SUBMISSION. IT IS QUITE CLEAR THAT AN ISSUE HASBEEN RAISED AS TO WHETHER THERE HAS BEEN COMPLIANCE WITH THE BOARD'S DECISION. THE LANGUAGE OF SECTION 65(5), IN OUR OPINION, CLEARLY INDICATES THAT NON-COMPLIANCE WITH A DETERMINATION IS A FACTUAL PRECONDITION TO THE OBLIGATION TO FILE AND MUST BE ESTABLISHED BY THE PARTY NOTIFYING THE

BOARD. THE MERE ALLEGATION OF FAILURE TO COMPLY PARTICULARLY WHERE, AS IN THE PRESENT CASE, IT IS CONTESTED, SURELY CANNOT SUFFICE TO OBLIGE THE BOARD TO FILE THE DETERMINATION OR DECISION WITHOUT FIRST DECIDING THE QUESTION AS TO WHETHER THERE HAS IN FACT BEEN A FAILURE TO COMPLY.

8. IT GOES WITHOUT SAYING THAT NO DECISION OR DETERMINATION OF THE BOARD IS MADE OR OUGHT TO BE CONSTRUED AS HAVING BEEN MADE WITH ANY INTENT TO CAUSE OR DIRECT ANY OF THE PARTIES THERETO TO COMMIT A BREACH OF THE LAW. IN DETERMINING WHETHER THERE HAS BEEN A COMPLIANCE WITH ITS DECISIONS, IT IS OBVIOUS THAT COMPLIANCE CAN ONLY BE SUCH AS THE LAW ALLOWS. THE PRESENT DISPUTE RAISES A QUESTION OF LAW WHICH IS CLEARLY OUTSIDE THE JURISDICTION OF THE BOARD, BUT ONE WHICH MUST NEVERTHELESS BE DETERMINED BEFORE THE BOARD MAY MAKE A DECISION ON THE QUESTION OF FAILURE TO COMPLY WITH ITS DETERMINATION.

9. THE FOREGOING BEING THE CASE, THE BOARD CAN MAKE NO DECISION AT THE PRESENT TIME AS TO WHETHER THE RESPONDENT HAS COMPLIED WITH ITS DETERMINATION AND MUST CONSEQUENTLY DENY THE COMPLAINANT'S REQUEST. THIS DENIAL IS WITHOUT PREJUDICE TO THE COMPLAINANT IN THE EVENT IT SHOULD RE-APPLY AFTER HAVING OBTAINED A RULING BY A FORUM OF COMPETENT JURISDICTION UPON THE ISSUES RAISED WITH RESPECT TO INCOME TAX AND PENSION PLAN DEDUCTIONS.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: APRIL 17, 1970.

THE FACTS IN THIS CASE ARE FULLY SET FORTH IN THE DECISION OF THE MAJORITY. I USE THE WORD 'DECISION' WITH SOME RESERVATION BECAUSE THE POSITION OF THE MAJORITY IS MORE CORRECTLY A SIMPLE DENIAL OF THE COMPLAINANT'S REQUEST BASED ON A NO DECISION PREMISE.

THE BOARD'S DETERMINATION OF JANUARY 12, 1970, AS AMENDED BY ITS FURTHER DECISION OF FEBRUARY 5, 1970, AMONG OTHER THINGS, PROVIDED THAT THE RESPONDENT PAY TO LAZARUS BELTSIDIS THE SUM OF $200.00, TO JEAN RENTERO THE SUM OF $650.00, AND TO MANUEL LIMA THE SUM OF $630.00. THESE LUMP SUM PAYMENTS WERE AWARDED 'AS COMPENSATION FOR LOSS OF WAGES', BECAUSE OF THE UNLAWFUL ACT OF THE RESPONDENT IN DISCHARGING THESE PEOPLE FOR UNION ACTIVITY.

INSTEAD OF COMPLYING WITH THE BOARD'S DETERMINATION, THE RESPONDENT FORWARDED TO THE SOLICITORS FOR THE COMPLAINANTS CHEQUES AS SET OUT BELOW:

	Board's Award	Less Pension Deduction	Less Income Tax	Cheque Issued
Lazarus Beltsidis	$200.00	$2.97	$24.75	$172.38
Jean Rentero	650.00	10.22	102.55	537.25
Manuel Lima	630.00	7.56	36.90	585.54

THE BOARD'S DETERMINATION WAS QUITE CLEAR IN THAT IT STATED THAT THE COMPLAINANTS WERE TO RECEIVE CERTAIN SPECIFIC STATED SUMS OF MONEY AS COMPENSATION FOR LOSS OF WAGES. THE RESPONDENT, IN ISSUING CHEQUES TO THE COMPLAINANTS, WHICH WITH DEDUCTIONS, WERE LESS THAN THE STATED AMOUNTS, WERE AGAIN QUITE CLEARLY NOT COMPLYING WITH THE BOARD'S DIRECTION.

I HAVE NO HESITATION IN FINDING NON-COMPLIANCE BY THE RESPONDENT TO THE BOARD'S DETERMINATION. HOWEVER, I SUBMIT THAT FOR THE PURPOSE OF ACTING ON THE COMPLAINANT'S REQUEST TO FILE THE DETERMINATION WITH THE REGISTRAR OF THE SUPREME COURT, THE BOARD DOES NOT HAVE TO FIND COMPLIANCE OR OTHERWISE. SECTION 65(5) OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

> WHERE THE EMPLOYER OR OTHER PERSON OR THE TRADE UNION HAS FAILED TO COMPLY WITH ANY OF THE TERMS OF THE DETERMINATION, ANY EMPLOYER, PERSON OR TRADE UNION AFFECTED BY THE DETERMINATION MAY, AFTER THE EXPIRATION OF FOURTEEN DAYS FROM THE DATE OF THE RELEASE OF THE DETERMINATION OR THE DATE PROVIDED IN THE DETERMINATION FOR COMPLIANCE, WHICHEVER IS LATER, NOTIFY THE BOARD IN WRITING OF SUCH FAILURE, AND THEREUPON THE BOARD SHALL FILE IN THE OFFICE OF THE REGISTRAR OF THE SUPREME COURT A COPY OF THE DETERMINATION, EXCLUSIVE OF THE REASONS, IF ANY, THEREFOR, IN THE PRESCRIBED FORM, WHEREUPON THE DETERMINATION SHALL BE ENTERED IN THE SAME WAY AS A JUDGMENT OR ORDER OF THAT COURT AND IS ENFORCEABLE AS SUCH.

THE FOREGOING SECTION IS IN CLEAR AND UNAMBIGUOUS LANGUAGE AND CLEARLY PROVIDES SIMPLY THAT AN AFFECTED PARTY WHO ALLEGES NON-COMPLIANCE NOTIFIES THE BOARD TO THAT EFFECT AND THE BOARD HAS NO ALTERNATIVE BUT TO FILE THE DETERMINATION WITH THE REGISTRAR OF THE SUPREME COURT FOR ENFORCEMENT. THE LARGE QUESTION OF COMPLIANCE OR OTHERWISE IS A MATTER FOR THE SUPERIOR COURT.

WHERE IN SECTION 65(5) HAS THIS BOARD THE POWER TO REFER THE PARTIES TO SOME OTHER COURT OF LAW TO HAVE ITS DETERMINATION FURTHER DETERMINED ON THE MATTER OF COMPLIANCE OR NOT.

THIS BOARD DOES NOT HAVE THE POWERS TO ENFORCE ITS DETERMINATIONS. THE LEGISLATURE TO CORRECT THIS MISCHIEF HAS PROPERLY PROVIDED UNDER SECTION 65(5) THAT OUR DETERMINATIONS ARE ENFORCEABLE ONLY BY FILING SAME WITH THE REGISTRAR OF THE SUPREME COURT.

MY VIEW OF THE PROVISIONS OF SECTION 65(5) OF THE LABOUR RELATIONS ACT, IS THAT WE HAVE NO ALTERNATIVE BUT TO FILE OUR DETERMINATIONS ON REQUEST WITH THE REGISTRAR OF THE SUPREME COURT FOR ENFORCEMENT. WITHOUT THE ENFORCING POWERS OF THE SUPREME COURT OUR DETERMINATIONS, IF NOT ACTED ON VOLUNTARILY, ARE JUST SIMPLE RECOMMENDATIONS.

IN THE RESULT, I WOULD ORDER THAT A COPY OF THE BOARD'S DETERMINATION IN THIS MATTER DATED JANUARY 12, 1970, AS AMENDED BY ITS FURTHER DECISION OF FEBRUARY 5, 1970, BE FILED FORTHWITH IN THE OFFICE OF THE REGISTRAR OF THE SUPREME COURT.

17070-69-U: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (COMPLAINANT) v. BELISLE AUTOMOBILES LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: MAURICE W. WRIGHT, Q.C. AND JAMES A. LEVIA FOR THE COMPLAINANT; K.A. MURCHISON, Q.C. FOR THE RESPONDENT.

DECISION OF O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: APRIL 9, 1970.

1. ON DECEMBER 4TH, 1969, THE AGGRIEVED PERSONS REPORTED FOR WORK WHEN THEY WERE INDIVIDUALLY CALLED INTO THE OFFICE OF MR. D. HODGE, WHO WAS THE SERVICE MANAGER OF THE RESPONDENT. THEY WERE SUMMARILY DISMISSED BY MR. HODGE AND WERE GIVEN NO REASON FOR THEIR DISMISSAL. THE EMPLOYEES WHO WERE DISMISSED HAD BEEN EMPLOYED BY THE COMPANY FOR PERIODS RANGING FROM TEN YEARS TO APPROXIMATELY EIGHT WEEKS.

2. THERE IS FURTHER EVIDENCE WHICH INDICATED THE EMPLOYER WAS AWARE OF INCREASED UNION ACTIVITY TO ORGANIZE HIS EMPLOYEES AND THAT THE ACTIVITY HAD BEEN CARRIED ON ADJACENT TO THE WORKING PREMISES ON DECEMBER 2ND AND DECEMBER 3RD.

3. HAVING REGARD TO THE KNOWLEDGE OF THE EMPLOYER OF UNION ACTIVITY, THE DISMISSAL OF THE EMPLOYEES CO-INCIDENTALLY WITH UNION ACTIVITY, THE ABRUPT METHOD OF DISMISSAL WITHOUT EXPLANATION TO EMPLOYEES, INCLUDING EMPLOYEES WITH LENGTHY SERVICE, WE ARE OF THE OPINION THAT THE EMPLOYER HAS THE ONUS OF PROVIDING A CREDIBLE EXPLANATION FOR ITS ACTIONS. RETAIL WHOLESALE AND DEPARTMENT STORE UNION v NATIONAL AUTOMATIC VENDING CO. LTD. 63 CLLC 1161 AT 1164 (OLRB).

4. THE MAIN WITNESSES FOR THE COMPANY WERE MR. CONRAD BELISLE AND MR. CHARLES BELISLE WHO EFFECTIVELY OPERATE THE RESPONDENT COMPANY. THEY SOUGHT TO JUSTIFY THE DISMISSAL OF THE EMPLOYEES

ON THE BASIS OF DECLINING BUSINESS. WHILE WE ARE SATISFIED THAT THE BUSINESS OF THE RESPONDENT WAS DECLINING WE ARE NOT SATISFIED THAT THE RESPONDENT HAS PROVIDED A CREDIBLE EXPLANATION FOR DISMISSING THESE EMPLOYEES.

5. MR. CHARLES BELISLE INDICATED THAT THE BUSINESS OF THE RESPONDENT HAD COMMENCED TO DECLINE IN APPROXIMATELY AUGUST AND SEPTEMBER 1969. HE TESTIFIED THAT THE DECLINE WAS GRADUAL AND INDICATED THAT HE ANTICIPATED THAT THE DECLINE WOULD REFLECT IN THE BODY SHOP IN FEBRUARY. SINCE ALL THE MEN DISMISSED WERE EMPLOYED IN THE BODY SHOP WHY IS IT THEY WERE DISMISSED IN DECEMBER IF THE EFFECTS OF DECLINING BUSINESS WOULD NOT BE FELT UNTIL FEBRUARY? IF THE DECLINE IN BUSINESS WOULD SHOW A GRADUAL DECREASE WHY WAS THERE SUCH AN ABRUPT DISMISSAL OF EMPLOYEES TOTALLING APPROXIMATELY TWENTY PER CENT OF ALL THE EMPLOYEES IN THE BODY SHOP AT THE BEGINNING OF DECEMBER?

6. THE RESPONDENT INDICATED THAT THE DECISION WAS BASED ON THE NOVEMBER STATEMENT WHICH WAS RECEIVED BY THE COMPANY ON OR ABOUT DECEMBER 2ND, 1969. THE FIGURES EFFECTIVE AT THE TIME OF THE COMPANY'S DECISION AND WHICH WERE SUBMITTED IN EVIDENCE ARE AS FOLLOWS:

	OCTOBER	NOVEMBER
1968	$71,000	$61,000
1969	74,000	60,000

THESE FIGURES REPRESENT A TOTAL DOLLAR VOLUME OF LABOUR SOLD. EVEN IF THESE FIGURES WARRANTED A DECREASE IN STAFF THEY WOULD NOT WARRANT A DISMISSAL OF APPROXIMATELY TWENTY PER CENT OF THE EMPLOYEES IN THE BODY SHOP CONSIDERING THAT THERE HAD NOT BEEN A LAY-OFF IN 1968. IN ARGUMENT SOME SUGGESTION WAS MADE THAT THESE FIGURES WERE USED TO CORROBORATE THE EMPLOYER'S DECISION. HOWEVER, IF THE RESPONDENT CHOSE TO BASE ITS DECISION ON A FINANCIAL STATEMENT THEN SURELY THESE FIGURES SHOULD HAVE BEEN DISTILLED FROM THE FINANCIAL STATEMENT AND USED AS A BASIS FOR THE DECISION.

7. WE THEREFORE CONCLUDE BOTH FROM THE EVIDENCE OF OPINION TENDERED BY MR. CHARLES BELISLE AS TO THE GRADUAL DECREASE AND FROM THE EVIDENCE OF COMPARATIVE FIGURES TENDERED, THAT NEITHER SUPPORTS THE RESPONDENT'S ACTIONS IN SUDDENLY AND ABRUPTLY TERMINATING THESE EMPLOYEES ON DECEMBER 4TH. THAT IS ESPECIALLY SO CONSIDERING THESE EMPLOYEES WERE EMPLOYED ON A PIECE WORK BASIS AND NOT ON A SALARY BASIS AND SO THE RESPONDENT WOULD NOT BE SUFFERING A FINANCIAL LOSS BY ALLOWING THEM TO CONTINUE IN THEIR EMPLOYMENT EVEN FOR A SHORT TIME, AND AT LEAST, TO FINISH SOME OF THE JOBS THEY WERE DOING AT THE TIME OF THEIR DISMISSAL. FOR EXAMPLE, ONE EMPLOYEE WAS IN THE PROCESS OF ASSEMBLING AND INSTALLING A MOTOR WHEN HE WAS ABRUPTLY DISCHARGED.

8. We are also unable to accept the explanation by the respondent when we consider the time when the decision was made. Mr. Charles Belisle in his evidence stated that he was absent on vacation for the period November 26th to December 5th or 6th. Both Mr. Conrad and Mr. Charles Belisle testified that the decision made was a joint decision made prior to Mr. Charles Belisle's leaving on vacation on November 26th. If the November statement received on December 2nd was relevant to the decision making process how would Messrs. Charles and Conrad Belisle be in a position to make the decision as to the number of people who were to be dismissed prior to November 26th? Surely if the financial statement was relevant then the number of people who were to be terminated would depend on what the statement showed - in short, the financial statement would dictate the number of people to be terminated. If the decision was made after the statement was received then Mr. Charles Belisle, who was absent on vacation, could not have participated in the decision and accordingly the decision could not have been a joint decision as Messrs. Belisle testified.

9. There are a number of other incidents which reflect on the credibility of the explanation given by the respondent and which may be summarized as follows:

(a) Both Mr. Conrad and Mr. Charles Belisle testified that the men were not given the reason for their dismissal because the company did not want it known that it's business was declining. However, either that day or the day subsequent to the dismissal, Mr. Conrad Belisle had a meeting with employees and advised them publicly that the business was declining. Since the evidence indicated that the company has in excess of one hundred employees we are unable to comprehend why the ten employees were not told of the decline in business while at a public meeting the remaining employees were told. That is no way to keep a secret.

(b) Why, also, was it necessary for Mr. Belisle at the public meeting of employees to refer to the dismissed employees in derogatory terms which reflect on their capabilities to perform the work. These gratuitous remarks were made about persons who had been employed by the company considerable lengths of time. That the company had employed these people for so long reflects more on their ability than the remarks made about them and the only inference that can be drawn from the remarks made is that they were directed at these employees on the basis that they had joined the union.

(c) The company's evidence respecting Mr. Charles Nagy was that Mr. Nagy was laid off because he was the junior employee. We accept that Mr. Nagy was a junior employee, however Mr. Nagy had a great deal of experience in his trade and had formerly operated his own business which he sold in conjunction with the sale of some property. Why then was no recommendation given to Mr. Nagy to enable him to secure other employment although a request for a recommendation was made?

(d) Also revealing is testimony by Mr. Hodge, the Service Manager, who responded to a question by a member of the Board by stating that the decision to let all these men go "did not square with a concern for the customers".

(e) Why, also, if business was declining as the company indicated was a man hired in the body shop approximately two or three weeks prior to December 4th when men with eight and ten years seniority were let go on December 4th? Why, too, were these men who were fired given a raise after the decline in business became apparent and why if such a drastic decline was anticipated were these men given a raise at all?

10. It was argued further that two other employees were terminated at the same time as the employees involved in this application. No evidence was tendered as to whether these two employees were union members and we are not prepared to draw any inference concerning them. In addition it is our experience that in some cases men who are not union members may be caught in the net of anti-union activity. Evidence of that sort, of course, would assist in buttressing a credible explanation but we find that factor of little assistance in the circumstances of this case.

11. In the result we are of the opinion that the decline in business in the circumstances of this case was used as a convenient excuse to justify the dismissal of employees for union activity. We are aware that it is not usual for employees to be advised that they are being dismissed for union activity and evidence as to the true basis for their dismissal, if that basis is for union activity is often not patent. That has been the experience of this Board and other tribunals concerned with matters of labour relations. Accordingly it is often necessary to discover the true facts by inference only. In this case we are of the opinion having regard to all the evidence, to the testimony of the witnesses and their demeanour in the witness' box that the inference that the aggrieved employees were fired for union activity is inescapable and we are unable to accept

THE EVIDENCE OF THE RESPONDENT AS A CREDIBLE EXPLANATION FOR ITS ACTIONS. IT HAS VIOLATED SECTION 50A OF THE LABOUR RELATIONS ACT.

12. ACCORDINGLY WE MAKE THE FOLLOWING DETERMINATION:

(A) MR. CHARLES NAGY DOES NOT REQUEST REINSTATEMENT AND ACCORDINGLY WE DETERMINE THAT HE BE COMPENSATED FOR THE PERIOD DECEMBER 4TH UNTIL DECEMBER 9TH.

(B) THAT THE FOLLOWING EMPLOYEES WILL BE REINSTATED TO THEIR EMPLOYMENT WITH COMPENSATION FOR LOSS OF WAGES AND EMPLOYMENT BENEFITS SUSTAINED BY THEM -

ALAIN CHARTRAND
RICHARD LAGUEUX
RAYMOND MARTIN
RONALD DROUIN
MICHAEL MACDONALD

(C) WE ARE OF THE OPINION THAT THE EVIDENCE CONCERNING MR. MICHAEL JOHN TIERNEY DOES NOT REVEAL ANY LOSS AND HAVING REGARD TO HIS TESTIMONY AND DEMEANOUR IN THE WITNESS' BOX WE ORDER THAT HE BE REINSTATED BUT WITHOUT COMPENSATION.

(D) THE PARTIES ARE TO MEET FORTHWITH TO DETERMINE THE AMOUNT OF COMPENSATION SUSTAINED BY THE INDIVIDUAL EMPLOYEES. IN THE EVENT THAT THE PARTIES ARE UNABLE TO AGREE AS TO THE LOSS OF EMPLOYMENT BENEFITS AND COMPENSATION TO WHICH THE EMPLOYEES ARE ENTITLED THE BOARD WILL REMAIN SEIZED OF THAT ISSUE AND IS PREPARED TO MAKE A DETERMINATION BASED ON THE EVIDENCE BEFORE IT AT THE REQUEST OF EITHER PARTY.

13. AS MR. ROMEO BELANGER DID NOT ATTEND THE HEARING THE COMPLAINT CONCERNING HIM IS DISMISSED.

DECISION OF BOARD MEMBER H.F. IRWIN: APRIL 9, 1970.

1. I DISSENT.

2. THE RESPONDENT COMPANY IS SITUATED IN THE CITY OF OTTAWA AND EMPLOYS APPROXIMATELY ONE HUNDRED PERSONS. IT HAS BEEN ESTABLISHED FOR OVER FORTY YEARS AND HAS A SUCCESSFUL RECORD OF OPERATING AN AUTOMOTIVE SALES AND SERVICE DEALERSHIP.

3. AMPLE EVIDENCE WAS ADDUCED AT THE HEARING BY THE RESPONDENT TO ESTABLISH THE FACT THAT THERE HAS BEEN A GENERAL SHARP DECLINE IN NEW CAR SALES IN THE OTTAWA AREA SINCE SEPTEMBER, 1969. THIS HAD

REDUCED THE AMOUNT OF REPAIR WORK REQUIRED TO BE DONE IN THE SERVICE DEPARTMENTS AND NECESSITATED THE REDUCTION IN THE NUMBER OF AUTOMOTIVE MECHANICS EMPLOYED IN THE LOCAL AUTOMOTIVE AGENCIES.

4. THE RESPONDENT COMPANY HAS BEEN NO EXCEPTION TO THIS GENERAL DECLINE IN THE AUTOMOTIVE BUSINESS AND ON DECEMBER 4TH, 1969 THE COMPANY WAS OBLIGED TO LAY-OFF A NUMBER OF MECHANICS BECAUSE OF LACK OF WORK. UNDER SECTION 58 OF THE LABOUR RELATIONS ACT THE MANAGEMENT IS FREE TO INCREASE OR DIMINISH THE NUMBER OF ITS EMPLOYEES IN ACCORDANCE WITH THE REQUIREMENTS OF THE BUSINESS. THE ISSUE BEFORE THIS BOARD IS WHETHER OR NOT CERTAIN OF THESE MECHANICS WERE SELECTED FOR LAY-OFF BY THE RESPONDENT CONTRARY TO SECTION 50(A) OF THE LABOUR RELATIONS ACT AS CLAIMED BY THE COMPLAINANT BECAUSE THEY JOINED THE CLAIMANT UNION ON DECEMBER 3RD LAST.

5. HAVING REGARD TO ALL THE EVIDENCE ADDUCED AT THE HEARINGS IN THIS MATTER AND THE ABLE REPRESENTATIONS MADE BY COUNSEL ON BEHALF OF THE CLAIMANT AND RESPONDENT, I AM COMPELLED TO CONCLUDE THAT THE CLAIMANT HAS NOT DISCHARGED THE HEAVY ONUS UPON IT TO CLEARLY ESTABLISH THAT THESE MEN WERE SELECTED FOR LAY-OFF BECAUSE THEY JOINED THE UNION AND CONTRARY TO THE ACT. I WOULD HAVE DISMISSED THE COMPLAINT.

17208-69-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. MODERN CABINET INDUSTRIES LTD. (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: ALBERT LALONDE, MARC MCKENNEY AND R. LALONDE FOR THE COMPLAINANT; JAMES B. CHADWICK FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER O. HODGES: APRIL 14, 1970.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT RICHARD ALLEN HAS BEEN DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 65 OF THE ACT. THE COMPLAINANT REQUESTS THAT THE AGGRIEVED BE REINSTATED ON HIS JOB WITH FULL PAY FOR LOST TIME.

2. ALLEN WAS HIRED BY THE RESPONDENT AT THE RATE OF $1.82 PER HOUR ON A TRY-OUT BASIS IN NOVEMBER 1969. ALLEN SAID THAT HE ASKED FOR RAISE BEFORE CHRISTMAN AND WAS TOLD BY THE FOREMAN THAT A RAISE WOULD COME IN THE NEW YEAR. AFTER THE NEW YEAR, HOWEVER, THE RAISE WAS NOT MENTIONED. HE WAS DISCHARGED ON JANUARY 14, 1970. THE REASON GIVEN FOR HIS DISCHARGE WAS THAT HE WORKED TOO SLOWLY. IT IS THE COMPLAINANT'S CONTENTION THAT ALLEN WAS DISCHARGED BECAUSE OF HIS ACTIVITIES IN ATTEMPTING TO BRING THE COMPLAINANT IN AS BARGAINING AGENT FOR HIS FELLOW EMPLOYEES.

3. THE MAJORITY OF THE RESPONDENT'S EMPLOYEES HAD BEEN MEMBERS OF THE COMPLAINANT UNION FOR SOME TIME, SO THAT ALLEN'S TASK OF ORGANIZING WAS A RATHER SIMPLE ONE. HE TESTIFIED THAT HE HAD SAID NOTHING IN THE PRESENCE OF ANY MANAGERIAL PEOPLE ABOUT THE UNION AND THAT HE ONLY SPOKE TO PERSONS WHO WERE ALREADY IN THE UNION. TWO OF THESE HE NAMED. ONE OF THE NAMED EMPLOYEES - COLLIER - WAS CALLED AS A WITNESS BY THE RESPONDENT. ON THE BASIS OF HIS OWN EVIDENCE, HIS UNION ACTIVITIES WERE EXTREMELY LOW KEY AND NOT CALCULATED TO DRAW THE ATTENTION OF ANYONE IN MANAGEMENT. IN FACT, ALLEN'S TESTIMONY WAS THAT HE DID NOT THINK THE FOREMAN KNEW HE WAS A MEMBER OF THE UNION. HE FELT THAT SOME ONE IN THE UNION MUST HAVE TOLD THE MANAGEMENT ABOUT HIS ROLE.

4. EVIDENCE WAS GIVEN BY COLLIER THAT A UNION MEETING HAD BEEN HELD IN DECEMBER AT WHICH TIME IT WAS DECIDED TO ORGANIZE THE RESPONDENT'S SHOP. HE SAID THAT ALLEN WAS DESIGNATED AS THE PERSON TO LOOK AFTER THIS MATTER. HE ALSO SAID THAT ALLEN'S ACTIVITIES ON BEHALF OF THE UNION WERE NOT NOTICEABLE IN THE SHOP.

5. ALLEN TESTIFIED THAT COLLIER TOLD HIM THAT HE HAD BEEN DISCHARGED FOR UNION ACTIVITY. HE TESTIFIED THAT COLLIER ALSO TOLD HIM THAT IMMEDIATELY AFTER HIS DISCHARGE ON JANUARY 14, 1970, PLUSKOTA, ALLEN'S FOREMAN, HAD CALLED A MEETING OF EMPLOYEES AND HAD ASKED EACH ONE WHETHER HE WANTED THE UNION IN THE SHOP. IN OUR OPINION, IT WAS THIS ALLEGED CONVERSATION WITH COLLIER THAT FORMED THE REAL BASIS FOR THIS COMPLAINT AT THE TIME IT WAS FILED. THE COMPLAINANT ADDUCED EVIDENCE OF AN ALLEGED STATEMENT OF PLUSKOTA'S TO ANOTHER EMPLOYEE SAID TO HAVE BEEN MADE AROUND THE TIME OF THE DISCHARGE. THE EVIDENCE RELATING TO THIS MATTER, TO WHICH WE WILL REFER BELOW, WAS UNKNOWN TO THE COMPLAINANT AT THE TIME IT FILED THE COMPLAINT.

6. THE EVIDENCE REFERRED TO ABOVE WAS GIVEN BY A FORMER EMPLOYEE OF THE RESPONDENT, STANLEY WINIARCZYK. HIS TESTIMONY IN CHIEF WAS CONFINED TO THE STATEMENT THAT PLUSKOTA HAD PHONED HIM AND TOLD HIM HE HAD DISCHARGED ALLEN FOR BRINGING IN THE UNION. AT THE COMMENCEMENT OF WINIARCZYK'S CROSS-EXAMINATION, HIS COUNSEL SOUGHT TO PREVENT EXPLORATION OF THE RELATIONSHIP BETWEEN PLUSKOTA AND THE WITNESS AND THE REASONS WHY WINIARCZYK WAS NO LONGER EMPLOYED BY THE RESPONDENT. HOWEVER, WE BELIEVE BECAUSE OF THE OBJECTIONS, THE WITNESS BECAME EVASIVE IN HIS ANSWERS FROM THAT POINT FORWARD. HE SOUGHT TO CONFINE THE EVIDENCE TO THE BARE STATEMENT SET OUT ABOVE AND REFUSED TO DIVULGE THE REST OF THE CONVERSATION WITH PLUSKOTA OTHER THAN TO SAY IT CONCERNED PRIVATE MATTERS. PLUSKOTA DENIED THAT HE HAD HAD ANY DISCUSSION WITH WINIARCZYK CONCERNING THE REASON FOR ALLEN'S DISCHARGE. IT IS OBVIOUS FROM THE MATERIAL FILED BY THE COMPLAINANT THAT WINIARCZYK DID NOT VOLUNTEER HIS EVIDENCE WITH RESPECT TO THE ALLEGED CONVERSATION WITH PLUSKOTA UNTIL A MONTH AFTER THE LAUNCHING OF THIS APPLICATION WHEN HE

BECAME INVOLVED IN SOME OTHER PROCEEDINGS BEFORE THE BOARD. HAVING THAT LATTER FACT IN MIND AND IN VIEW OF THE DEMEANOUR OF WINIARCZYK IN THE WITNESS BOX, WE WOULD HESITATE TO DECIDE THE ISSUE ON HIS EVIDENCE ALONE.

7. PLUSKOTA DENIED DISCHARGING ALLEN FOR UNION ACTIVITIES OR AFFILIATION. HE STATED THAT ALLEN WAS A SLOW WORKER WHO NEEDED CONSTANT PRODDING. HE SAID THAT ON THE DATE OF THE DISCHARGE, ALLEN WAS WORKING ON COMPLETION OF A CABINET WHILE A TRUCK STOOD BY WAITING TO LOAD IT. HE ADMITTED THAT HE KEPT AFTER ALLEN, BUT THAT THE LATTER DID NOT RESPOND. PLUSKOTA SAID, IT TOOK ALLEN ABOUT SIX HOURS TO PUT THE CASTORS ON THE CABINET. HE AGREED THAT SOME DELAY WAS CAUSED BECAUSE CERTAIN MACHINE WORK HE HAD PERFORMED LEFT THE GROOVES TIGHT. IT WAS PLUSKOTA'S POSITION THAT HE FINALLY DISCHARGED ALLEN ON THE DAY IN QUESTION BECAUSE HE COULD NO LONGER TOLERATE ALLEN'S REFUSAL TO HURRY IN SPITE OF THE FACT THAT A TRUCK WAS STANDING BY. HE SAID HE TOLD ALLEN HE WAS TOO SLOW AND THAT IN ANY EVENT, THEY WERE GETTING IN A NEW MACHINE WHICH WOULD DISPLACE ALLEN.

8. THERE SEEMS LITTLE DOUBT, AS ALREADY NOTED, THAT THIS COMPLAINT WAS LODGED ON ALLEN'S BEHALF ON THE BASIS OF WHAT HE ALLEGES COLLIER TOLD HIM. HIS OWN EVIDENCE IS THAT AT THE TIME OF THE DISCHARGE HE DID NOT BELIEVE HE WAS FIRED FOR SLOW WORK. HE DID NOT ACCEPT PLUSKOTA'S EXPLANATIONS, BUT DID NOT KNOW WHY HE WAS FIRED. HE SAID HE BELIEVED PLUSKOTA WAS TRYING TO FIND A PRETEXT TO DISCHARGE HIM.

9. ALLEN TESTIFIED THAT COLLIER PHONED HIM ON THE EVENING OF THE DISCHARGE AND ENGAGED HIM IN A GUESSING GAME AS TO WHY HE WAS REALLY FIRED. ALLEN SAID COLLIER FINALLY TOLD HIM HE WAS FIRED BECAUSE OF THE UNION. HE ALSO STATED THAT COLLIER TOLD HIM PLUSKOTA HAD, THAT DAY, POLLED THE EMPLOYEES ON THEIR POSITION WITH RESPECT TO THE UNION. COLLIER DENIED THIS AND SAYS THAT IT WAS ALLEN WHO TOLD HIM THE DISCHARGE WAS BECAUSE OF THE UNION. COLLIER STATED THAT HE PHONED ALLEN THE DAY AFTER THE DISCHARGE CONCERNING A UNION MEETING AND TOLD HIM THEN THAT PLUSKOTA HAD POLLED THE EMPLOYEES ON THAT DAY ON THEIR POSITION AS TO THE UNION. PLUSKOTA'S EVIDENCE IS THAT THE POLLING DID TAKE PLACE, BUT THAT IT WAS, AS COLLIER SAID, THE DAY AFTER THE DISCHARGE. HE SAID THAT HE HAD HEARD AT THE POLISH HALL ON THE NIGHT OF JANUARY 14TH, THE DATE OF DISCHARGE, THAT THE UNION WAS ATTEMPTING TO ORGANIZE THE SHOP. AS A RESULT OF THIS INFORMATION, PLUSKOTA SAYS, HE QUESTIONED THE EMPLOYEES ON JANUARY 15TH.

10. THE CARDINAL POINT IN THIS WHOLE MATTER IS THE DATE UPON WHICH COLLIER TELEPHONED ALLEN. IF IT OCCURRED ON JANUARY 14TH, THEN OBVIOUSLY PLUSKOTA QUESTIONED THE EMPLOYEES IMMEDIATELY AFTER HE DISCHARGED ALLEN. IF THAT, IN TURN, IS WHAT HAPPENED, THE QUESTIONING ACQUIRES A SIGNIFICANCE OF FAR DEEPER PROPORTIONS WITH RESPECT TO PLUSKOTA'S MOTIVES THAN IT WOULD OTHERWISE HAVE.

11. We find Collier to be something of an enigma. He told the Board that he had told Pluskota that he was a member and a strong supporter of the union. He was quite positive that Allen was not fired for acting on behalf of the union and equally assertive in stating that he was fired for being too slow. There was no suggestion that he took part in or was consulted about the discharge and certainly none indicating he was part of management. The conclusions he expressed were, insofar as the evidence goes, his own opinions supported only by his statement that Allen was slow in his work. In assessing Collier's evidence, the thought is insistent that he is one who tends to run with the fox and hunt with the hounds.

12. Having in mind the foregoing and having observed the demeanour of the witnesses and the manner in which they gave their testimony, we prefer the evidence of Allen wherever it conflicts with that of Collier and Pluskota. We believe therefore that the conversation between Collier and Allen took place in the evening of January 14th, 1970, the date of the discharge. We consequently believe that Pluskota discharged Allen and then proceeded to question the remaining employees concerning their union affiliations. We find it impossible to divorce this latter event from the discharge of Allen and are persuaded that on the evidence we must find that Allen was discharged by the respondent on January 14, 1970 for union activity contrary to The Labour Relations Act.

13. The complainant advised the Board that Allen does not seek reinstatement but does ask for compensation for wages lost from the date of discharge on January 14, 1970 to February 20, 1970 when he obtained other employment.

14. The Board therefore determines that as compensation for lost wages for the aforementioned period, the respondent forthwith shall pay Richard Allen the sum of $464.00.

DECISION OF BOARD MEMBER F. W. MURRAY: April 14, 1970.

1. I dissent from the majority decision.

2. Having considered all of the evidence, I am not prepared to read anything into the evidence of Mr. Collier other than that which was before us. I would not conclude that he was being anything but straightforward when he expressed the opinion that Richard Allen, the aggrieved, was slow at his work and this was to the best of his belief the reason why he was fired.

3. On the other hand I would accept the evidence of Pluskota concerning Allen's dismissal. I would conclude from the evidence that Allen's failure to work expeditiously installing the castors on

A CABINET, PARTICULARLY IN VIEW OF THE FACT THAT A TRUCK WAS STANDING BY WAITING FOR THIS SHIPMENT, WAS THE REASON PLUSKOTA DISCHARGED THE AGGRIEVED ON JANUARY 14TH.

4. ACCORDINGLY, I WOULD NOT HAVE FOUND THAT THE DISCHARGE OF ALLEN BY THE RESPONDENT WAS CONTRARY TO THE LABOUR RELATIONS ACT, AND I WOULD HAVE DISMISSED THE COMPLAINT.

17332-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. CROWE FOUNDRY LIMITED (RESPONDENT).

- AND -

17365-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. CROWE FOUNDRY LIMITED (RESPONDENT).

- AND -

17539-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. CROWE FOUNDRY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C..

APPEARANCES AT THE HEARING: LORNE INGLE AND GIL WAREHAM FOR THE COMPLAINANT, W. S. COOK AND J. FROST FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 27, 1970.

1. THE ABOVE MATTERS ARE CONSOLIDATED.

2. THE COMPLAINANT HAS COMPLAINED UNDER THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT THAT G. TONIN, DONALD REID, ROSS WEBER AND SYDNEY REID HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE ACT.

3. THE COMPLAINANT UNION COMMENCED A CAMPAIGN TO ORGANIZE THE RESPONDENT'S EMPLOYEES ON OR BEFORE JANUARY 12, 1970. NO APPLICATION FOR CERTIFICATION HAS BEEN MADE WITH RESPECT TO THE RESPONDENT'S EMPLOYEES AS OF THE DATE OF THIS HEARING.

4. THE EVIDENCE ESTABLISHED THAT THE RESPONDENT HAD KNOWLEDGE OF THE UNION'S ATTEMPT TO ORGANIZE ITS EMPLOYEES BECAUSE OF A GREAT DEAL OF DISCUSSION AMONG THE EMPLOYEES THROUGHOUT THE PLANT. APPARENTLY, ONE EMPLOYEE KNOWN AS TIGER RECEIVED A ONE-DAY SUSPENSION FOR SIGNING UP UNION MEMBERS ON COMPANY PREMISES DURING WORKING HOURS. WHILE THERE WERE SOME DISCUSSIONS BETWEEN THE EMPLOYEES AND THE FOREMEN, THESE DISCUSSIONS WERE IN A JOKING VEIN.

5. ON JANUARY 28, 1970, MR. TONIN WAS LAID OFF BY THE RESPONDENT.

6. ON FEBRUARY 6, 1970, MR. D. REID AND MR. R. WEBER WERE

LAID OFF BY THE RESPONDENT.

7. On March 12, 1970, Mr. S. Reid was discharged by the respondent.

8. There was no mention of the union by the company at the time the employees were told of their lay-off or discharge.

9. The respondent called extensive evidence which clearly established that commencing around the first of December 1969, there was a drastic reduction in orders received by the respondent because of a cancellation of a contract between the respondent and an American customer whose business had been sold. Since the slack period began, 12 employees have quit and have not been replaced by the respondent, 24 employees have been laid off, 6 persons were or are absent for extended periods because of injuries or operations, 7 employees were transferred because of lack of work in their regular jobs, and 2 persons were discharged.

10. Since the four aggrieved persons were either laid off or discharged, the respondent has hired only one new employee and that employee had the necessary experience to perform specialized work required by the respondent. None of the aggrieved persons had the experience to perform the specialized work.

11. The evidence further established that Mr. Tonin was selected for lay-off because there was no work for him to perform on the roll-over machine which he regularly operated. While the company tried to retain him in employment by transferring him to other work, Mr. Tonin did not appear to apply himself with the necessary diligence to perform the new work to which he was assigned and on one occasion he refused to perform certain work which had been offered to him. While the company agreed that it had no complaint with respect to Mr. Tonin's work on the roll-over machine, in view of the fact that no such work was now available and in view of his apparent lack of interest in his performance of the other work offered to him, the company decided to lay him off.

12. Mr. D. Reid and Mr. R. Weber were selected for lay-off because of absenteeism and a record for reporting late for work on many occasions. There was no complaint about the quality of the work but the respondent found that it could not depend on their attendance and they were therefore selected for lay-off.

13. Mr. S. Reid was discharged for negligently causing a fire on the respondent's premises which injured another employee and caused damage to property. This fire occurred as a result of horseplay engaged in by Mr. Reid.

14. The respondent stated that it was prepared to recall Mr. Tonin, Mr. D. Reid and Mr. R. Weber if and when there were

SUFFICIENT ORDERS ON HAND TO PERMIT THE NECESSARY PRODUCTION IN THEIR RESPECTIVE DEPARTMENTS.

15. THE OTHER PERSONS LAID OFF DURING THE PERIOD IN QUESTION WERE SELECTED FOR LAY-OFF BY THE RESPONDENT HAVING REGARD TO THE RESPONDENT'S REQUIREMENTS IN THE DEPARTMENTS IN WHICH THEY HAD BEEN EMPLOYED AND THEIR LENGTH OF SERVICE WITH THE RESPONDENT.

16. HAVING REGARD TO ALL THE EVIDENCE, WE FIND THAT MR. TONIN, MR. D. REID AND MR. WEBER LAID OFF BY THE RESPONDENT AS PART OF A LARGE SCALE LAY-OFF REQUIRED BY A DRASTIC REDUCTION IN PRODUCTION. WHILE THEIR LAY-OFFS APPARENTLY COINCIDED WITH THE UNION'S CAMPAIGN TO ORGANIZE THE RESPONDENT'S EMPLOYEES, THERE WERE TWENTY OTHER PERSONS LAID OFF DURING THE PERIOD IN QUESTION CONCERNING WHICH LAY-OFFS NO COMPLAINTS HAVE BEEN FILED. THE FACT THAT THREE OF THE PERSONS LAID OFF WERE UNION MEMBERS WAS, IN OUR VIEW, A FORTUITOUS CIRCUMSTANCE. THERE WAS NO EVIDENCE THAT THE RESPONDENT KNEW THE AGGRIEVED PERSONS WERE UNION MEMBERS AND WE ARE SATISFIED THAT THEIR UNION MEMBERSHIP WAS NOT A FACTOR IN THEIR SELECTION FOR LAY-OFF. THE THREE AGGRIEVED PERSONS WERE SELECTED FOR LAY-OFF BASED ON THE PRODUCTION REQUIREMENTS OF THE COMPANY AND THEIR RESPECTIVE WORK RECORDS.

17. WE ARE FURTHER SATISFIED THAT THE DISCHARGE OF MR. S. REID WAS CAUSED BY HIS ENGAGING IN DANGEROUS HORSEPLAY WHICH CAUSED DAMAGE AND HIS MEMBERSHIP IN THE UNION WAS NOT A FACTOR WHICH THE COMPANY TOOK INTO CONSIDERATION BEFORE DECIDING TO DISCHARGE HIM.

18. WE THEREFORE FIND THAT THE COMPLAINANT HAS FAILED TO ESTABLISH THAT ANY OF THE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE ACT.

19. THE COMPLAINTS ARE ACCORDINGLY DISMISSED.

17428-69-U: THE HOTEL AND CLUB EMPLOYEES' UNION, LOCAL 299, TORONTO OF THE HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, (A.F.L.-C.I.O.-C.L.C.) (COMPLAINANT) v. COMMONWEALTH HOLIDAY INNS OF CANADA LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: L. A. MACLEAN, O. ZAMBRI AND J. CHAPPELLE FOR THE COMPLAINANT, F. G. HAMILTON AND C. A. CLINE FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER

F. W. MURRAY: April 27, 1970.

1. This is a complaint for relief under section 65 of The Labour Relations Act wherein the complainant complains that Anna Stefanowich was dealt with by the respondent contrary to the provisions of sections 50, 52 and 59A of The Labour Relations Act in that she was discharged by the respondent on February 20, 1970. This is a matter that turns on the credibility of the aggrieved person and the coffee shop manageress who effected the discharge of the aggrieved person.

2. The complainant had made application for certification on January 23, 1970 and a hearing was held on February 12, 1970. The aggrieved person attended the hearing on behalf of the union on February 12, 1970 but did not testify. The certification application is still pending before the Board and it may be necessary for the aggrieved person to testify at a subsequent hearing in support of allegations against the petition that was filed. The evidence established that prior to the aggrieved person being discharged the service provided to customers during the time the aggrieved person was on duty was unsatisfactory. In addition, certain housekeeping functions in the coffee shop where the aggrieved person was employed did not satisfy Mrs. Watkins, the respondent's coffee shop manageress. The aggrieved person was cautioned with respect to the service she was providing and the duties she was performing several times prior to her discharge. There is some discrepancy in the evidence concerning the time that these cautions were given. On the same date that the aggrieved person was discharged, Mrs. Hallock, another employee who worked on the same shift as the aggrieved person, was also discharged because of the quality of her work. The aggrieved person's employment was terminated by Mrs. Watkins on February 20 after having worked for the company for approximately six weeks.

3. The aggrieved person had twenty years' experience working in dining rooms at the Royal York Hotel and the King Edward Sheraton Hotel. However, it was readily apparent from her testimony that she was not entirely happy with the fact that, as a coffee shop waitress, she was required to perform certain cleaning functions and functions which might otherwise have been performed by a bus boy in the dining rooms where she had previously worked.

4. After being discharged by Mrs. Watkins, Mrs. Stefanowich contacted the respondent's innkeeper and obtained an interview with him. Mrs. Stefanowich advised the innkeeper that Mrs. Watkins had told her at the time of her discharge that the decision to discharge her was made by the innkeeper. The innkeeper denied making this decision and advised Mrs. Stefanowich that it had been Mrs. Watkins' decision to discharge the aggrieved person. The inn-

KEEPER OFFERED TO ARRANGE A MEETING BETWEEN MRS. STEFANOWICH AND MRS. WATKINS' IMMEDIATE SUPERIOR. HOWEVER, MRS. STEFANOWICH DECLINED THIS OPPORTUNITY.

5. MRS. WATKINS TESTIFIED THAT MRS. STEFANOWICH'S UNION ACTIVITY HAD NO PART IN HER DECISION TO DISCHARGE MRS. STEFANOWICH. MRS. WATKINS FURTHER TESTIFIED THAT BECAUSE OF A CONTINUING PROBLEM WITH RESPECT TO SERVICE IN THE COFFEE SHOP, MRS. WATKINS DECIDED TO DISCHARGE BOTH MRS. STEFANOWICH AND MRS. HALLOCK. THEY WERE BOTH DISCHARGED ON THE SAME DAY BECAUSE OF THE COMPLAINTS ABOUT SERVICE WHICH HAD COME TO THE ATTENTION OF MRS. WATKINS.

6. THE EVIDENCE CONCERNING MRS. STEFANOWICH'S UNION ACTIVITY WAS THAT SHE ATTENDED THE HEARING BEFORE THE BOARD ON SEPTEMBER 12. SHE ALSO WAS SEEN PASSING THE TIME OF DAY WITH ONE OF THE COMPLAINANT'S ORGANIZERS WHEN HE CAME INTO THE COFFEE SHOP WHILE SHE WAS ON SHIFT. WHEN ASKED BY A MEMBER OF MANAGEMENT WHETHER SHE KNEW THE UNION ORGANIZER, SHE ADVISED HIM THAT SHE HAD KNOWN HIM FOR MORE THAN TWENTY YEARS. THIS CONVERSATION TOOK PLACE WITHIN A WEEK AFTER MRS. STEFANOWICH WAS HIRED. THE EVIDENCE ESTABLISHED, HOWEVER, THAT THE UNION'S ORGANIZATIONAL CAMPAIGN HAD COMMENCED IN OCTOBER AND THE FACT THAT THE UNION WAS ORGANIZING THE EMPLOYEES OF THE RESPONDENT BECAME KNOWN TO THE MANAGEMENT PERSONNEL OF THE RESPONDENT NO LATER THAN DECEMBER 1969.

7. HAVING REGARD TO ALL THE EVIDENCE, WE FIND THAT THE COMPLAINANT HAS FAILED TO SATISFY US THAT MRS. STEFANOWICH WAS DISCHARGED CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT. AS SET OUT ABOVE, THE QUESTION OF CREDIBILITY MUST BE DECIDED IN THIS CASE. WHILE THE EVIDENCE OF MRS. WATKINS AND MRS. STEFANOWICH IS IN CONFLICT, WE PREFER THE EVIDENCE OF MRS. WATKINS WHERE IT DOES NOT COINCIDE WITH THE EVIDENCE OF MRS. STEFANOWICH. IN MAKING THIS DECISION, WE HAVE CONSIDERED THE DEMEANOUR OF THE TWO WITNESSES WHILE THEY WERE TESTIFYING AND THE MANNER IN WHICH THEY TESTIFIED. WHILE MRS. STEFANOWICH HAS EVERYTHING TO GAIN AS A RESULT OF THESE PROCEEDINGS, WE CANNOT SEE ANY REAL ADVANTAGE TO EITHER MRS. WATKINS OR THE RESPONDENT COMPANY IN EFFECTING THE DISCHARGE OF MRS. STEFANOWICH AT THE TIME THEY DID IF IT WERE FOR A REASON OTHER THAN THE REASON GIVEN BY MRS. WATKINS. WHILE A DISCHARGE MIGHT INTIMIDATE OTHER EMPLOYEES IF EFFECTED IMMEDIATELY PRIOR TO A VOTE, SINCE A VOTE HAS NOT AS YET BEEN DIRECTED, THE TIMING OF THIS DISCHARGE COULD NOT REASONABLY BE EXPECTED TO ACCOMPLISH SUCH A PURPOSE. THE DISCHARGE OF MRS. STEFANOWICH CANNOT AFFECT THE UNION'S MEMBERSHIP POSITION. IN ADDITION, HER DISCHARGE CANNOT BENEFIT THE RESPONDENT IN THE EVENT THAT SHE IS SUBSEQUENTLY CALLED TO TESTIFY CONCERNING THE UNION'S CHARGES WITH RESPECT TO THE PETITION THAT WAS FILED IN THE CERTIFICATION APPLICATION. ON

THE CONTRARY, HER DISCHARGE MAY ADVERSELY AFFECT THE RESPONDENT IN THIS REGARD. THE RESPONDENT KNEW OF THE UNION'S CAMPAIGN LONG BEFORE MRS. STEFANOWICH WAS EMPLOYED. THEY ALSO KNEW FROM THE REFERENCES GIVEN ON HER APPLICATION FOR EMPLOYMENT THAT SHE HAD WORKED FOR EMPLOYERS WHO HAD A CONTRACTUAL RELATIONSHIP WITH THE COMPLAINANT UNION. A WEEK AFTER SHE COMMENCED WORK, MRS. STEFANOWICH SPOKE TO A UNION ORGANIZER ON THE RESPONDENT'S PREMISES AND ADVISED ONE OF THE RESPONDENT'S MANAGERIAL PERSONNEL THAT SHE HAD KNOWN THE GENTLEMAN FOR MORE THAN TWENTY YEARS. NO ACTION WAS TAKEN WITH RESPECT TO MRS. STEFANOWICH AT THAT TIME. ON THE OTHER HAND, WE HAVE THE TESTIMONY OF MRS. WATKINS, WHICH WAS NOT REFUTED BY MRS. STEFANOWICH, THAT THERE WERE PROBLEMS IN THE COFFEE SHOP WITH RESPECT TO SERVICE. IN ADDITION TO THE DISCHARGE OF MRS. STEFANOWICH BECAUSE OF POOR SERVICE, ANOTHER EMPLOYEE WAS DISCHARGED AT THE SAME TIME FOR THE SAME REASON AND NO COMPLAINT WAS FILED WITH RESPECT TO THAT EMPLOYEE.

8. WHILE IT CANNOT BE SAID THAT THE RESPONDENT HAS CLEARLY ESTABLISHED THAT ALL OF THE POOR SERVICE FOR WHICH THE AGGRIEVED PERSON WAS BLAMED WAS THE FAULT OF THE AGGRIEVED PERSON, HOWEVER THAT MAY BE, WE ARE SATISFIED ON ALL THE EVIDENCE BEFORE US THAT THE REASON FOR THE DISCHARGE OF MRS. STEFANOWICH WAS BECAUSE OF THE POOR SERVICE GIVEN TO THE RESPONDENT'S CUSTOMERS IN THE COFFEE SHOP. WE ARE SATISFIED THAT MRS. STEFANOWICH'S MEMBERSHIP IN OR ACTIVITY ON BEHALF OF THE UNION WAS NOT THE REASON FOR HER DISCHARGE. WE ACCEPT THE REASONS GIVEN BY MRS. WATKINS AS BEING THE REAL REASONS FOR DISCHARGING MRS. STEFANOWICH. THERE WAS CLEAR EVIDENCE THAT THE EMPLOYEES ON MRS. STEFANOWICH'S SHIFT WERE NOT PROVIDING THE SERVICE REQUIRED BY THE RESPONDENT. SINCE WE HAVE FOUND THAT HER DISCHARGE WAS NOT FOR REASONS CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT, WE CANNOT CONCERN OURSELVES WITH WHETHER OR NOT THE RESPONDENT HAD SUFFICIENT EVIDENCE THAT MRS. STEFANOWICH WAS TO BLAME FOR ALL THE POOR SERVICE ATTRIBUTED TO HER AND WAS THEREFORE JUSTIFIED FOR THE DISCIPLINARY ACTION TAKEN.

9. FOR THE REASONS SET OUT ABOVE, WE MUST THEREFORE FIND THAT THE COMPLAINANT HAS FAILED TO SATISFY US THAT MRS. ANNA STEFANOWICH WAS DISCHARGED CONTRARY TO THE PROVISIONS OF SECTIONS 50, 52 OR 59A OF THE LABOUR RELATIONS ACT AND THE COMPLAINT IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER O. HODGES: APRIL 27, 1970.

I DISSENT. THE EVIDENCE INDICATES TO ME THAT MRS. STEFANOWICH WAS DISMISSED BECAUSE SHE HAD TAKEN AN ACTIVE INTEREST AND FIRM POSITION IN SUPPORT OF THE UNION ORGANIZATIONAL CAMPAIGN.

I THEREFORE FIND THAT SHE BE REINSTATED IN HER EMPLOYMENT WITH COMPENSATION FOR LOST WAGES AND EMPLOYMENT BENEFITS.

INDEXED ENDORSEMENT - SECTION 47(a)

16548-69-M: RETAIL CLERKS UNION LOCALS No. 206 AND 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANTS) v. SUPER CITY DISCOUNT FOODS LIMITED; LOBLAW GROCETERIAS CO. LIMITED; UNION OF CANADIAN RETAIL EMPLOYEES (RESPONDENTS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: IAN SCOTT AND THOMAS REES FOR THE APPLICANT'S; W.G. GRAY, Q.C., G.H. METCALFE AND F. D. KEAN FOR THE CORPORATE RESPONDENTS, MARTIN LEVINSON AND DANIEL GILBERT FOR UNION OF CANADIAN RETAIL EMPLOYEES.

DECISION OF THE BOARD: APRIL 7, 1970.

1. THIS IS AN APPLICATION UNDER SECTION 47a OF THE LABOUR RELATIONS ACT, WHEREIN THE APPLICANTS REQUEST THE BOARD TO DETERMINE WHETHER SUPER CITY DISCOUNT FOODS LIMITED (HEREINAFTER CALLED SUPER CITY) SOLD ITS BUSINESS TO LOBLAW GROCETERIAS CO. LIMITED (HEREINAFTER CALLED LOBLAWS) WITHIN THE MEANING OF SECTION 47a OF THE ACT AND TO DEFINE THE COMPOSITION OF THE APPROPRIATE BARGAINING UNIT.

2. THE APPLICANTS CALLED EVIDENCE WHICH ESTABLISHED THAT THE APPLICANTS AND SUPER CITY ARE PARTIES TO A COLLECTIVE AGREEMENT WHICH COVERED ALL FULL-TIME EMPLOYEES OF SUPER CITY AT CERTAIN RETAIL STORES IN ONTARIO, INCLUDING THE FULL-TIME EMPLOYEES AT A STORE SITUATE IN NEPEAN TOWNSHIP AND AT A STORE SITUATE IN GLOUCESTER TOWNSHIP WHICH HAD BEEN OPERATED BY SUPER CITY PRIOR TO THE EVENTS IN QUESTION. THE APPLICANTS AND SUPER CITY ARE PARTIES TO A SIMILAR COLLECTIVE AGREEMENT WHICH COVERED THE PART-TIME EMPLOYEES AT THE SAID STORES.

3. IT WAS AGREED THAT UNION OF CANADIAN RETAIL EMPLOYEES WAS THE BARGAINING AGENT FOR ALL EMPLOYEES OF LOBLAW GROCETERIAS CO. LIMITED IN ONTARIO, WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. THE GEOGRAPHIC DESCRIPTION OF THE BARGAINING UNIT REFERRED TO IN THE COLLECTIVE AGREEMENT BETWEEN LOBLAWS AND UNION OF CANADIAN RETAIL EMPLOYEES WOULD INCLUDE THE TOWNSHIPS OF NEPEAN AND GLOUCESTER.

4. THE EVIDENCE ALSO ESTABLISHED THAT SUPER CITY AND LOBLAWS WERE ASSOCIATED COMPANIES WHICHCARRIED ON SIMILAR OPERATIONS IN ONTARIO. IMMEDIATELY PRIOR TO THE EVENTS IN QUESTION, SUPER CITY OPERATED ONE RETAIL FOOD STORE IN NEPEAN TOWNSHIP AND ONE RETAIL STORE IN GLOUCESTER TOWNSHIP. THE TWO STORES WERE THE ONLY STORES OPERATED BY SUPER CITY IN THE AREA WHICH INCLUDED OTTAWA AND THE

TOWNSHIPS ADJACENT TO OTTAWA. WHILE LOBLAWS OPERATED STORES IN OTTAWA, THERE WERE NO LOBLAWS STORES LOCATED IN NEPEAN TOWNSHIP OR GLOUCESTER TOWNSHIP PRIOR TO THE EVENTS IN QUESTION.

5. AS STATED ABOVE, SUPER CITY AND LOBLAWS WERE ASSOCIATED COMPANIES. SUPER CITY SHARED COMMON MANAGEMENT WITH LOBLAWS ABOVE THE LEVEL OF STORE MANAGER AND ALSO SHARED BUYING, MARKETING AND SERVICE FACILITIES. THE ONLY EMPLOYEES EMPLOYED BY SUPER CITY WERE THE STORE EMPLOYEES AND THE ONLY SUPER CITY MANAGEMENT WHICH WAS NOT SHARED BY LOBLAWS WAS THE STORE MANAGER AT EACH STORE.

6. IN MAY 1969, MR. METCALFE, THE PERSONNEL AND LABOUR RELATIONS MANAGER OF BOTH CORPORATE RESPONDENTS, WROTE TO MR. REES, AN INTERNATIONAL REPRESENTATIVE OF RETAIL CLERKS INTERNATIONAL ASSOCIATION, AND ADVISED MR. REES THAT SUPER CITY WOULD CEASE OPERATIONS AT THE TWO STORES IN THE MONTH OF JUNE 1969. AT ABOUT THE SAME TIME, MR. WALLACE, THE VICE-PRESIDENT AND DIRECTOR OF MARKETING OPERATIONS FOR BOTH CORPORATE RESPONDENTS, WROTE A LETTER ON BEHALF OF LOBLAWS TO ALL THE FULL-TIME EMPLOYEES AT THE TWO STORES, WHICH READS AS FOLLOWS:

> WE WISH YOU TO BE ADVISED THAT AFTER SUPER CITY CLOSES ITS OPERATION ON OR ABOUT JUNE 14TH, 1969, AS QUICKLY AS POSSIBLE THEREAFTER THE STORE WILL BE OPENED AND OPERATED BY LOBLAW GROCETERIAS CO. LIMITED. WE ALSO WISH ALL TO BE OFFICIALLY ADVISED CONCERNING FUTURE EMPLOYMENT.
>
> WE ARE PLEASED TO ADVISE THAT WE ARE IN A POSITION TO OFFER YOU, A FULL-TIME EMPLOYEE, EMPLOYMENT WITH LOBLAWS. EVERY EFFORT WILL BE MADE TO PLACE YOU IN A POSITION COMPARABLE TO THAT WHICH YOU PRESENTLY OCCUPY.

7. ON SATURDAY, JUNE 7TH, 1969, SUPER CITY CLOSED ITS OPERATIONS AT THE TWO STORES. AFTER TAKING INVENTORY, ALL PERISHABLE GOODS WERE TRANSFERRED TO LOBLAWS STORES IN OTTAWA AND ALL SUPER CITY BRAND GOODS WERE SHIPPED TO ANOTHER SUPER CITY STORE IN KINGSTON. CREDITS WERE CLAIMED THROUGH THE TORONTO OFFICE WITH RESPECT TO ALL GOODS SHIPPED OUT OF THE TWO STORES. MOST OF THE STOCK-IN-TRADE, SHELVING AND EQUIPMENT WERE LEFT ON THE PREMISES OF THE TWO STORES.

8. ALL THE EMPLOYEES AT THE TWO STORES WERE SCHEDULED TO WORK ON MONDAY, JUNE 9TH IN ACCORDANCE WITH PAST PRACTICE. COMMENCING ON MONDAY, JUNE 9TH, LOBLAWS TOOK POSSESSION OF THE PREMISES AT THE TWO LOCATIONS AND THE SIGNS ON THE STORE WERE CHANGED TO READ LOBLAWS. AFTER THE SIGNS WERE CHANGED AND THE STOCK REARRANGED AND THE NECESSARY NEW STOCK BROUGHT IN, THE STORES REOPENED ON WEDNESDAY, JUNE 11TH AND WERE OPERATED FROM THAT DATE AS PART OF THE LOBLAWS CHAIN OF SUPERMARKETS. WHILE THE STORES WERE CLOSED ON JUNE 9TH AND 10TH, THE EMPLOYEES REPORTED TO WORK AS USUAL ON THOSE DAYS AND PRE-

PARED THE STORES FOR THE WEDNESDAY OPENING.

9. NONE OF THE FORMER SUPER CITY EMPLOYEES WERE REQUIRED TO COMPLETE NEW APPLICATIONS FOR EMPLOYMENT FORMS FOR LOBLAWS. APPARENTLY, ALL THE PERSONNEL RECORDS WERE SIMPLY TRANSFERRED OVER TO LOBLAWS AS PART OF AN INTER-COMPANY TRANSACTION. ALL THE FIXTURES, MOVABLE SHELVING AND EQUIPMENT AND MOST OF THE STOCK-IN-TRADE WHICH HAD BEEN USED BY SUPER CITY WERE TAKEN OVER AND USED BY LOBLAWS. APART FROM THE TWO-DAY SHUTDOWN WHICH WAS REQUIRED TO MAKE THE NECESSARY ALTERNATIONS TO CHANGE THE PHYSICAL IDENTITY OF THE STORES, THE BUSINESS WAS CONTINUED BY LOBLAWS AS A GOING CONCERN.

10. THE EVIDENCE CALLED BY THE APPLICANTS ESTABLISHED THAT THE EMPLOYEES AUTOMATICALLY WENT BACK TO WORK ON JUNE 9TH AND IT DID NOT OCCUR TO THEM THAT THEY SHOULD APPLY FOR WORK AT LOBLAWS. AFTER WORKING ON MONDAY AND TUESDAY TO PREPARE FOR THE STORE OPENING ON WEDNESDAY, THEY CONTINUED THEIR NORMAL FUNCTIONS UNDER THE SAME SUPERVISION AS THEY HAD WORKED UNDER AT SUPER CITY. ALL EMPLOYEES AND BOTH STORE MANAGERS CONTINUED IN THE STORES AFTER LOBLAWS TOOK OVER THE OPERATIONS.

11. WHEN THE TWO STORES WERE TAKEN OVER BY LOBLAWS, THE STAFFS OF THE TWO STORES WERE SUPPLEMENTED BY OTHER LOBLAWS EMPLOYEES. OF THE TOTAL OF FORTY-ONE FULL-TIME EMPLOYEES, THIRTEEN HAD BEEN TRANSFERRED FROM OTHER LOBLAWS STORES. THIS NUMBER WAS GRADUALLY REDUCED AND AT THE PRESENT TIME THERE IS ONE EMPLOYEE IN EACH STORE WHO HAD WORKED AT ANOTHER LOBLAWS STORE IMMEDIATELY PRIOR TO JUNE 9TH.

12. NONE OF THE RESPONDENTS CALLED EVIDENCE, HOWEVER, COUNSEL FOR THE CORPORATE RESPONDENTS VOLUNTEERED THAT THERE WAS NO WRITTEN AGREEMENT BETWEEN THE CORPORATE RESPONDENTS COVERING THE CHANGE IN OPERATIONS IN THE STORES FROM SUPER CITY TO LOBLAWS.

13. COUNSEL FOR THE APPLICANTS ARGUED THAT, IN THE ABSENCE OF SOME EXPLANATION TO THE CONTRARY, THE BOARD SHOULD DRAW AN INFERENCE FROM THE ABOVE FACTS AND FIND THAT THE BUSINESS THAT HAD BEEN CARRIED ON BY SUPER CITY AT THE TWO STORES WAS TRANSFERRED TO LOBLAWS OR THAT THERE HAD BEEN SOME MANNER OF DISPOSITION OF THE BUSINESSES BY SUPER CITY TO LOBLAWS.

14. COUNSEL FOR THE RESPONDENT UNION TOOK THE POSITION THAT THE BOARD SHOULD REFUSE TO FIND THAT THERE HAD BEEN A SALE OF A BUSINESS SINCE THE EVIDENCE WAS EQUIVOCAL AND WAS EQUALLY CONSISTENT WITH A SALE OF ASSETS.

15. COUNSEL FOR THE CORPORATE RESPONDENTS POINTED OUT THAT THE CORPORATE RESPONDENTS WERE NOT THE APPLICANTS IN THESE PROCEEDINGS AND ACCORDINGLY WERE NOT SEEKING TO PROVE ANYTHING. THERE WAS THEREFORE NO ONUS ON THE CORPORATE RESPONDENTS TO CALL EVIDENCE. THE

BOARD WAS ALSO REMINDED THAT THE APPLICANTS HAD SUMMONED APPROXIMATELY TWELVE OFFICIALS OF LOBLAWS AND, FOR REASONS BEST KNOWN TO THE APPLICANTS, HAD NOT CALLED ANY OF THE COMPANY'S OFFICIALS AS WITNESSES. IT WAS ARGUED THAT THERE WAS NO EVIDENCE OF THE AMOUNT OF CONSIDERATION, IF ANY, THAT PASSED BETWEEN THE CORPORATE RESPONDENTS OR INDEED OF ANY FINANCIAL TRANSACTION. IT WAS THEREFORE THE POSITION OF THE CORPORATE RESPONDENTS THAT THE APPLICANTS HAD FAILED TO ESTABLISH THAT THERE HAD BEEN A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE ACT.

16. THE BOARD HAS CONSIDERED THE EVIDENCE IN THIS CASE AND THE AUTHORITIES RELIED UPON BY THE PARTIES. ALTHOUGH THE BOARD WOULD HAVE BEEN GREATLY ASSISTED IN MAKING ITS DETERMINATION HAD ALL THE AVAILABLE FACTS BEEN PRESENTED IN A CLEAR AND CONCISE MANNER, THE BOARD, HOWEVER, MUST MAKE ITS DETERMINATION ON THE SKELETAL EVIDENCE PRESENTED. HAVING ASSESSED ALL THE EVIDENCE BEFORE US AND ALTHOUGH SOME OF THE DETAILS OF THE TRANSACTION ARE OBSCURE, WE FIND, HOWEVER, THAT THERE WAS INDEED A TRANSACTION BETWEEN THE CORPORATE RESPONDENTS INVOLVING THE GROCERY SUPERMARKET BUSINESS CARRIED ON AT THE TWO STORES. WE ARE ALSO SATISFIED THAT THE TRANSACTION INVOLVED MORE THAN THE SALE OF ASSETS. IN REACHING THIS DETERMINATION, WE HAVE HAD REGARD FOR THE FACT THAT SUBSTANTIALLY THE SAME TYPE OF OPERATIONS HAS BEEN CARRIED ON AT THE SAME LOCATIONS BY THE SAME EMPLOYEES WHOSE EMPLOYMENT CONTINUED WITHOUT INTERRUPTION AND THEY WERE AT ALL TIMES SUPERVISED AND MANAGED BY THE SAME MANAGERIAL STAFF. THESE OPERATIONS HAVE BEEN CARRIED ON BY RELATED COMPANIES WHICH SHARE THE SAME TOP LEVEL MANAGEMENT AND THE SAME BUYING, MARKETING AND SERVICE FACILITIES. HAVING REGARD TO THE NATURE OF THE RELATIONSHIP BETWEEN THE TWO CORPORATE RESPONDENTS AND IN THE ABSENCE OF ANY EVIDENCE WHICH MIGHT LEAD TO A CONTRARY CONCLUSION AND IN VIEW OF THE FACT THAT THERE WAS NO WRITTEN AGREEMENT BETWEEN THEM COVERING THE TRANSACTION, WE MUST CONCLUDE THAT THE FINANCIAL ASPECTS OF THE TRANSACTION WERE COVERED BY BOOK ENTRIES BETWEEN THE TWO COMPANIES (IF WE ASSUME THAT SEPARATE BOOKS ARE KEPT). WE ARE NOT CONCERNED HERE WITH TWO UNRELATED COMPANIES WHICH HAVE ENTERED INTO AN ARM'S LENGTH TRANSACTION. THE TWO COMPANIES OPERATIONS AND MANAGEMENT WERE SO INTERRELATED THAT NO FORMAL DOCUMENTATION OF THE TRANSACTIONS WAS APPARENTLY REQUIRED. IN VIEW OF THE ABOVE FACTS, ALTHOUGH THE EXACT NATURE OF THE TRANSACTION IS LEFT TO SPECULATION, WE FIND THAT THERE IS AN INESCAPABLE INFERENCE THAT THE TRANSACTION BETWEEN THE TWO COMPANIES CONSTITUTED A SALE WITHIN THE MEANING OF SECTION 47A(1) OF THE ACT. SECTION 47A(1) READS AS FOLLOWS:

> 47A - (1) IN THIS SECTION,
> (A) "BUSINESS" INCLUDES A PART OR PARTS THEREOF;
> (B) "SELLS" INCLUDES LEASES, TRANSFERS AND ANY OTHER MANNER OF DISPOSITION, AND "SOLD" AND "SALE" HAVE CORRESPONDING MEANINGS.

17. We have no hesitation in finding that the operation of the two stores in question was part of the "business" of Super City up to June 7, 1969.

18. The work "sells" as used in section 47a(1)(b) has an extended meaning which includes "any other manner of disposition" of a business. In view of the evidence recited above and the fact that the two corporate respondents are related companies, we are not prepared to find that it was a mere coincidence that Loblaws continued the grocery store business at each of the two locations. When effect is given to all the evidence, especially the manner in which the employees continued their employment, we find that all the evidence, when considered in the light of the relationship between the corporate respondents, leads to the inescapable inference that the businesses formerly carried on by Super City at the two stores, including the goodwill, were transferred to Loblaws or that Loblaws by some manner of disposition from Super City became seized of the businesses formerly carried on at the two stores by Super City. We further find that such transfers or dispositions constitute a sale of the business at each store within the meaning of section 47a of the Act.

19. In view of the fact that the evidence disclosed that credits were claimed for certain goods transferred out of the stores to other stores operated by Loblaws, we are not prepared to find that the transaction was without consideration. However, even if the transfer or disposition of the business was without consideration and was an outright gift from Super City to Loblaws, we would find that such transaction, in the circumstances described above, constituted a sale of part of the business of Super City to Loblaws.

20. In arriving at our decision, we have considered the cases cited by the parties and are of opinion that the criteria enunciated by the Board in the Thorco Manufacturing Limited Case, 65 CLLC 16,052, are applicable in this matter.

21. In view of the evidence concerning the intermingling of the Loblaws employees at the two stores after June 9, 1969, and the evidence and representations of the parties concerning the description of the appropriate bargaining unit, we further find that the provisions of section 47a(5) and (7) must be invoked in this matter. We accordingly determine that all employees of Loblaws Groceterias Co. Limited in its retail stores in the Township of Nepean, save and except store manager, persons above the rank of store manager, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period, constitute a unit of employees of Loblaw Groceterias Co. Limited appropriate for collective bargaining, hereinafter called bargaining unit #1.

22. We further determine that all employees of Loblaw

GROCETERIAS CO. LIMITED REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD IN ITS RETAIL STORES IN THE TOWNSHIP OF NEPEAN, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, AND PERSONS REFERRED TO IN BARGAINING UNIT #1, CONSTITUTE A UNIT OF EMPLOYEES OF LOBLAW GROCETERIAS CO. LIMITED APPROPRIATE FOR COLLECTIVE BARGAINING, HEREINAFTER CALLED BARGAINING UNIT #2.

23. WE FURTHER DETERMINE THAT ALL EMPLOYEES OF LOBLAW GROCETERIAS CO. LIMITED IN ITS RETAIL STORES IN THE TOWNSHIP OF GLOUCESTER, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF LOBLAW GROCETERIAS CO. LIMITED APPROPRIATE FOR COLLECTIVE BARGAINING, HEREINAFTER CALLED BARGAINING UNIT #3.

24. WE FURTHER DETERMINE THAT ALL EMPLOYEES OF LOBLAW GROCETERIAS CO. LIMITED REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD IN ITS RETAIL STORES IN THE TOWNSHIP OF GLOUCESTER, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, AND PERSONS REFERRED TO IN BARGAINING UNIT #3, CONSTITUTE A UNIT OF EMPLOYEES OF LOBLAW GROCETERIAS CO. LIMITED APPROPRIATE FOR COLLECTIVE BARGAINING, HEREINAFTER CALLED BARGAINING UNIT #4.

25. PURSUANT TO THE PROVISIONS OF SECTION 47A(7) AND FOR THE PURPOSES OF DETERMINING WHICH TRADE UNION SHALL BE THE BARGAINING AGENT FOR THE EMPLOYEES IN EACH OF THE BARGAINING UNITS, THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT LOBLAW GROCETERIAS CO. LIMITED IN EACH OF THE BARGAINING UNITS.

26. ALL EMPLOYEES OF THE RESPONDENT LOBLAW GROCETERIAS CO. LIMITED IN BARGAINING UNIT #1 ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

27. ALL EMPLOYEES OF THE RESPONDENT LOBLAW GROCETERIAS CO. LIMITED IN BARGAINING UNIT #2 ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

28. ALL EMPLOYEES OF THE RESPONDENT LOBLAW GROCETERIAS CO. LIMITED IN BARGAINING UNIT #3 ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE

ELIGIBLE TO VOTE.

29. ALL EMPLOYEES OF THE RESPONDENT LOBLAW GROCETERIAS CO. LIMITED IN BARGAINING UNIT #4 ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

30. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANTS AND UNION OF CANADIAN RETAIL EMPLOYEES.

31. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENTS - SECTION 79(2)

17385-69-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA AND ITS LOCAL 673 (APPLICANT) v. DOUGLAS AIRCRAFT COMPANY OF CANADA LTD. (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

APPEARANCES AT THE HEARING: JOSEPH C. MALONEY, RAY LOMAS, GEORGE C. THOMSON AND LENNOX A. MACLEAN FOR THE APPLICANT; D. F. O. HERSEY AND H. G. NEWSOME FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 9, 1970.

1. THE APPLICANT HAS APPLIED TO THE BOARD PURSUANT TO THE PROVISIONS OF SECTION 79(2) OF THE LABOUR RELATIONS ACT FOR A DETERMINATION AS TO WHETHER THE FOLLOWING PERSONS ARE EMPLOYEES OF DOUGLAS AIRCRAFT COMPANY OF CANADA LTD. WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. THE PERSONS IN QUESTION AND THEIR RESPECTIVE POSITIONS ARE AS FOLLOWS:

ROY DEWOLF STAN CARR BILL HOLLAND SIM WALLAMBEE REG WHITTINGTON BOB MAYS	SUB-CONTRACT REPRESENTATIVES
FRANK DANBY	SENIOR ENGINEERING SERVICES ANALYST
LYNN RAEBURN	STAFF WRITER
I. R. ROBINSON	DEPARTMENT CLERK

THERE WAS FILED WITH THE BOARD A COLLECTIVE AGREEMENT BETWEEN THE

PARTIES EFFECTIVE DATE OF WHICH IS JULY 27, 1968 AND THE DATE OF EXPIRY SEPTEMBER 15, 1971.

2. THE COMPANY MOVED THAT THE QUESTIONS WITH WHICH THE APPLICANT IS CONCERNED SHOULD FIRST BE DEALT WITH BY A BOARD OF ARBITRATION AND THAT THESE PROCEEDINGS SHOULD STAND ADJOURNED UNTIL SUCH TIME AS THE ARBITRATION BOARD ISSUES ITS AWARD.

3. IN A LETTER DATED FEBRUARY 25, 1970 ADDRESSED TO THE BOARD, THE COMPANY ADVISED THAT IN ITS OPINION FRANK DANBY AND LYNN RAEBURN ARE EMPLOYEES OF THE COMPANY WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. THIS POSITION, WHICH WAS CONFIRMED AT THE HEARING AND WITH WHICH THE APPLICANT AGREES, MAKES FURTHER INQUIRY WITH RESPECT TO THESE EMPLOYEES UNNECESSARY. IN ORDER THAT THE MATTER MAY BE QUITE CLEAR, HOWEVER, THE BOARD DETERMINES ON THE ABOVE BASIS THAT FRANK DANBY AND LYNN RAEBURN ARE EMPLOYEES OF DOUGLAS AIRCRAFT COMPANY OF CANADA LTD. WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

4. WITH RESPECT TO I. R. ROBINSON LISTED AS A DEPARTMENT CLERK, THE COMPANY TOOK THE POSITION THAT HE WAS EMPLOYED IN LABOUR RELATIONS. THIS IS NOT DISPUTED BY THE APPLICANT AND WE ASSUME THAT SUCH IS THE CASE. THAT BEING SO, WE FIND THAT HE FALLS WITHIN THE AMBIT OF THE FOLLOWING TERMS OF THE SCOPE AND RECOGNITION CLAUSE OF THE COLLECTIVE AGREEMENT WHICH PROVIDES:

> "..... THE BARGAINING UNIT SHALL NOT INCLUDE EMPLOYEES EMPLOYED IN A MANAGERIAL CAPACITY OR PERSONNEL ENGAGED IN EMPLOYEE RELATIONS, SECURITY, FINANCIAL MANAGEMENT, BUSINESS MANAGEMENT OR MANPOWER PLANNING."

THE PARTIES FURTHER AGREED IN THE SAME SECTION TO THE SPECIFIC EXCLUSION OF EMPLOYEE RELATIONS PERSONNEL WHICH AGAIN IS THE OCCUPATION OR CLASSIFICATION IN WHICH ROBINSON IS SAID TO BE EMPLOYED. IN VIEW OF THE FOREGOING AND IN THE ABSENCE OF ANY SUGGESTIONS OF A MEANINGFUL CHANGE IN DUTIES, THERE SEEMS NO SIGNIFICANT PURPOSE TO BE SERVED IN MAKING A DETERMINATION WITH RESPECT TO ROBINSON'S EMPLOYMENT STATUS UNDER THE LABOUR RELATIONS ACT.

5. IN SO FAR AS THE SIX PERSONS CLASSIFIED AS SUB-CONTRACT REPRESENTATIVES ARE CONCERNED, THE SITUATION IS SOMEWHAT DIFFERENT FROM THAT OF ROBINSON. THE COMPANY MAINTAINS THAT THESE EMPLOYEES NOT ONLY EXERCISE MANAGERIAL FUNCTIONS BUT ARE ALSO EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND ARE THEREFORE NOT EMPLOYEES WITHIN THE MEANING OF THE LABOUR RELATIONS ACT SINCE THEY FALL WITHIN THE EXCLUSIONS SET OUT IN SECTION 3(B) THEREOF.

6. THE UNION SAYS THAT THE EMPLOYEES WERE EITHER HIRED INTO

OR PLACED IN THE CLASSIFICATION AFTER THE SIGNING OF THE CURRENT COLLECTIVE AGREEMENT. ITS ARGUMENT IS THAT THERE IS NOTHING IN THE COLLECTIVE AGREEMENT EXCLUDING THAT CLASS OF EMPLOYEES FROM THE BARGAINING UNIT. IT IS NOT, THE APPLICANT STATED, ATTEMPTING TO USE SECTION 79(2) FOR THE PURPOSE OF EXPANDING THE BARGAINING UNIT, BUT SIMPLY TO DETERMINE WHETHER OR NOT THE PERSONS IN THE CLASSIFICATION OF SUB-CONTRACT REPRESENTATIVES ARE EMPLOYEES WITHIN THE MEANING OF THE ACT.

7. THE COLLECTIVE AGREEMENT MAKES NO SPECIFIC REFERENCE TO SUB-CONTRACT REPRESENTATIVES. THE COMPANY IS OF THE OPINION, HOWEVER, THAT THEY COME WITHIN THE MEANING OF "RESIDENT MANAGEMENT REPRESENTATIVES" WHICH IS ONE OF THE EXEMPTIONS FROM THE BARGAINING UNIT SET OUT IN THE SCOPE CLAUSE OF THE AGREEMENT. THIS ARGUMENT, IN OUR OPINION, CLEARLY RAISES A QUESTION WHICH FALLS TO BE DECIDED BY AN ARBITRATOR. IT RAISES A POINT DISTINCT FROM THE QUESTION AS TO WHETHER THE PERSONS IN THIS CLASSIFICATION ARE EMPLOYEES WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

8. IN THE CIRCUMSTANCES, WE ARE FURTHER OF THE OPINION THAT THE LATTER QUESTION IS PROPERLY REFERRED TO THE BOARD BY THE APPLICANT PURSUANT TO SECTION 79(2) OF THE ACT. THE MOTION FOR ADJOURNMENT IS THEREFORE DENIED.

9. WE, ACCORDINGLY, APPOINT MR. D. K. AYNSLEY, EXAMINER, TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF THE FOLLOWING SUB-CONTRACT REPRESENTATIVES:

ROY DEWOLF
STAN CARR
BILL HOLLAND
SIM WALLAMBEE
REG WHITTINGTON
BOB MAYS

17523-69-M: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. NORTH YORK GENERAL HOSPITAL (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

DECISION OF THE BOARD: APRIL 6, 1970.

1. THIS IS AN APPLICATION UNDER SECTION 79(2) OF THE LABOUR RELATIONS ACT FOR A DETERMINATION WHETHER WILLIAM MACKINNON IS AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

2. COUNSEL FOR THE RESPONDENT BY HIS LETTER DATED APRIL 3, 1970 STATED IN PART AS FOLLOWS:

We do not maintain that Mr. MacKinnon is not an employee under the terms of the Labour Relations Act.

3. Having regard to the position taken by the respondent in this matter, the Board declares that William MacKinnon is an employee of the respondent for the purposes of the Act. The Board's declaration in this matter does not necessarily resolve the dispute between the parties. It would appear that the applicant takes the position that Mr. MacKinnon is an employee of the respondent covered by the terms of the collective agreement. The respondent, however, takes the position that Mr. MacKinnon is excluded from the collective agreement under the excluded classification of technical personnel. It would therefore appear that the issue between the parties as to whether or not Mr. MacKinnon is covered by the collective agreement must be resolved pursuant to the provisions of the collective agreement. The Board is unable to assist the parties with respect to the interpretation of their agreement.

INDEXED ENDORSEMENTS - SECTION 79A

17159-69-M: International Union United Automobile, Aerospace, Agricultural Implement Workers of America (UAW) (Trade Union) v. DUPLATE CANADA LIMITED HAWKESBURY DIVISION (Employers).

BEFORE: R. A. Furness, Vice-Chairman and Board Members H. F. Irwin and P. J. O'Keeffe.

APPEARANCES AT THE HEARING: T. A. Armstrong, H. Hiller and W. Lynett for the trade union; J. W. Healy, Q.C., B. M. Anderson, John Clarke and John Crncich for the employer.

DECISION OF VICE CHAIRMAN R. A. FURNESS AND BOARD MEMBER H. F. IRWIN: April 20, 1970.

1. This is a reference from the Minister of Labour to the Board pursuant to Section 79A of The Labour Relations Act. The question referred by the Minister of Labour is whether he has the authority to appoint a conciliation officer.

2. In order to answer this question it is necessary to examine the chain of events which led up to the trade union making a request for appointment of conciliation officer on December 15, 1969. On November 22, 1968, the trade union and its Locals No. 195, No. 222 and No. 1256 signed a Master Agreement with Duplate Canada Limited. The Master Agreement became effective on October 1, 1968 and continues in effect until September 30, 1971. At the time the Master Agreement was signed, Duplate Canada Limited operated divisions in Oshawa, Oakville and Windsor. Section 23 in the Master Agreement provides:

ESTABLISHMENT OF NEW PLANTS

> In the event that the International Union, United Automobile, Aerospace, Agricultural Implement Workers of America CLC, is certified as the Collective Bargaining Agent for employees at a new plant of the Company, save and except those employees excluded by the certificate, doing similar or comparable work as that done by the employees covered by this agreement, then such agreement covering all items, where applicable, will apply to the employees of such plant providing it is not contrary to Provincial legislation.

Section 2 of the Master Agreement provides further:

RECOGNITION

> The Company recognizes the Union as the sole collective bargaining agency for all its hourly-rated employees who are not otherwise excluded by this agreement.

3. Duplate Canada Limited commenced to operate a new plant at Hawkesbury in May of 1969, and in September of that year, the trade union filed an application for certification with respect to certain of the employees of the Duplate Canada Limited at Hawkesbury. On October 14, 1969, the Board issued a certificate to the trade union with respect to "all employees of the respondent at Hawkesbury, save and except foremen, persons above the rank of foreman, security guards, quality control technicians, and office and sales staff".

4. In a letter dated October 20, 1969, the trade union notified the employer of its desire "to negotiate a local agreement in addition to the Master Agreement presently in effect between the Company and the union and it's (sic) Locals 195, 222 and 1256, as provided for in section 23 of the Master Agreement", and advised the employer of the names of three members of the Negotiating Committee. The employer in a letter dated October 27, 1969 replied and stated, "We agree that under section 23, the collective agreement now covers those employees at the Hawkesbury plant described in the Ontario Labour Relations Board certificate dated October 14, 1969. It, therefore, becomes unnecessary and indeed impossible to bargain with a view to making a collective agreement". The employer added, however, that it had no objection to negotiating for agreement upon a local supplementary agreement such as those in effect in its Oshawa, Oakville and Windsor plants.

5. The parties subsequently met and held seven meetings between November 10 and December 12, 1969. A range of topics were

DISCUSSED AND A MEASURE OF AGREEMENT WAS APPARENTLY REACHED ON SOME MATTERS. THE EMPLOYER NOTIFIED THE TRADE UNION IN A LETTER DATED NOVEMBER 5, 1969 THAT IN ACCORDANCE WITH THE TERMS OF SECTION 7 OF THE MASTER AGREEMENT THAT IT WOULD COMMENCE TO DEDUCT INITIATION FEES AND UNION DUES FOR THE MONTHS OF OCTOBER AND NOVEMBER FROM THE PAY RECEIVED ON NOVEMBER 14, 1969. A LIST OF EMPLOYEES WAS ATTACHED AND THE EMPLOYER REQUESTED THE NAME OF THE LOCAL FINANCIAL SECRETARY TO WHOM SUCH DEDUCTIONS SHOULD BE SENT. HOWEVER, AS THE RESULT OF ADVICE GIVEN BY THE TRADE UNION TO THE EMPLOYER DURING THE FIRST MEETING BETWEEN THE PARTIES, THE EMPLOYER SUBSEQUENTLY INFORMED THE TRADE UNION THAT IT WOULD REFRAIN FROM DEDUCTING UNION DUES OR INITIATION FEES FROM ANY EMPLOYEE UNTIL FURTHER NOTICE WAS RECEIVED FROM THE TRADE UNION IN WRITING.

6. THE EMPLOYER MAILED A LETTER DATED NOVEMBER 17, 1969 TO ALL EMPLOYEES IN THE BARGAINING UNIT AT HAWKESBURY IN WHICH IT REFERRED TO THE FACT THAT THE TRADE UNION HAD BEEN CERTIFIED TO ACT AS THE BARGAINING AGENT FOR HOURLY EMPLOYEES AT HAWKESBURY. THE LETTER ADDED THAT THE MASTER AGREEMENT COVERED ALL THE "HOURLY EMPLOYEES" SINCE THE DATE OF CERTIFICATION, OCTOBER 14, 1969. THE EMPLOYER FURTHER INFORMED THESE EMPLOYEES THAT BECAUSE A COLLECTIVE AGREEMENT WAS ALREADY IN EXISTENCE THERE WAS NO REQUIREMENT TO BARGAIN FOR ANOTHER CONTRACT OR FOR MODIFICATIONS TO THE EXISTING CONTRACT. THE EMPLOYER ADDED THAT IT HAD, HOWEVER, AGREED TO MEET WITH THE UNION'S TEMPORARY BARGAINING COMMITTEE TO DISCUSS LOCAL ITEMS AND ADDED THAT IF AGREEMENT COULD NOT BE REACHED, THE EMPLOYER WOULD IMPLEMENT LOCAL PRACTICES AND WORKING CONDITIONS.

7. IN A FURTHER LETTER DATED DECEMBER 12, 1969 TO THE EMPLOYEES AT HAWKESBURY, THE EMPLOYER INFORMED THEM THAT IT HAD BEEN UNABLE TO REACH AGREEMENT ON LOCAL ITEMS WITH THE UNION. THE EMPLOYER WENT ON TO ADVISE ITS EMPLOYEES THAT THE PRESENT PRACTICES AND WORKING CONDITIONS OUTLINED IN AN ACCOMPANYING EMPLOYEE INFORMATION MANUAL WOULD REMAIN IN EFFECT UNTIL THE EXPIRY DATE OF THE MASTER AGREEMENT ON SEPTEMBER 30, 1971.

8. ON OR ABOUT DECEMBER 29, 1969, THE EMPLOYER SENT TO ITS HOURLY EMPLOYEES AT THE HAWKESBURY PLANT A BULLETIN ENCLOSING AND EXPLAINING BOTH THE MASTER AGREEMENT AND A BOOKLET ENTITLED LOCAL WORKING CONDITIONS AND PRACTICES. THE LATTER DOCUMENT, WHICH WAS TO COME INTO EFFECT ON JANUARY 1, 1970, DEALT WITH EXCLUSIONS, REPRESENTATION, LAY-OFF AND RECALL, TRANSFER AND PROMOTION, PREFERRED CLASSIFICATIONS, ESTABLISHMENT OF CLASSIFICATIONS, HOURS OF WORK, CHANGE OF SHIFT PROVISION, OVERTIME DISTRIBUTION, REST PERIODS, WAGES AND SKILLED TRADES.

9. THE PARTIES HAVE VIEWED THE MASTER AGREEMENT FROM RADICALLY DIFFERENT POINTS OF VIEW. THE TRADE UNION'S APPROACH IS TO REGARD THE MASTER AGREEMENT AS A SKELETON OR OUTLINE OF CERTAIN COMMON CONDITIONS AT THE EMPLOYER'S PLANTS AT OSHAWA, WINDSOR,

Oakville and Hawkesbury. Counsel for the trade union stressed the fact that local agreements have been entered into between the parties covering the employees at Oshawa, Windsor and Oakville.

10. The arguments of counsel for the union may be considered under the following headings. Firstly, it was not the intention of either party to have the Master Agreement applied automatically upon certification as a collective agreement with respect to the employees at the employer's new plant at Hawkesbury, so as to preclude the trade union from exercising its satutory rights under The Labour Relations Act, particularly the right to the appointment of a conciliation officer and, if necessary, the right to strike. Secondly, two tests should be applied to the Master Agreement to determine whether it is a collective agreement, (a) is it capable of being applied, and, (b) has it been applied? He argued that there was ambiguity in the language of sections 2 and 23 of the Master Agreement in defining the employees covered. Thirdly, there is no identifiable group of employees to whom the Master Agreement may apply and that the Master Agreement is therefore not a collective agreement since this is inherent in the language of section 1(1)(c) of The Labour Relations Act, and fourthly, the provisions of the Master Agreement are incomplete in establishing the working relationship between the trade union and the employer.

11. Counsel for the employer argued that the fact of whether or not the Master Agreement had been applied to the employees at Hawkesbury had no effect on its validity as a collective agreement. He listed the provisions of the Master Agreement applicable to the employees at Hawkesbury including, check-off, initiation fees, strike and lockout, inter-plant transfer, calling pay, health and safety, grievance procedure, right to arbitration and limited seniority provisions. He attributed the failure to implement some of these provisions to the refusal of the trade union to co-operate in their implementation and cited the refusal of the trade union to accept the check-off and initiation fees. He emphasized that the employer's action regarding the check-off and the posting of a seniority list acknowledged the existence of the Master Agreement as a collective agreement. Counsel for the employer took the position that the letter dated October 20, 1969 from the trade union to the employer was not notice under section 11 or section 40 as contemplated by section 13 of The Labour Relations Act. He also adopted the position that the Master Agreement became binding upon the parties as a collective agreement within the meaning of section 1(1)(c) of The Labour Relations Act with respect to the bargaining unit defined in the Board's certificate dated October 14, 1969.

12. The Board heard certain testimony with respect to the intention of the trade union at the time the Master Agreement was signed and reserved upon the admissibility of such extrinsic evidence. It is well established that before extrinsic evidence may be led to explain or clarify any type of ambiguity in a written agreement, the

EXISTENCE OF AN AMBIGUITY MUST BE AFFIRMATIVELY ESTABLISHED, SEE REGINA V. WEATHERILL, EX PARTE INTERNATIONAL CHEMICAL WORKERS' UNION 68 CLLC ¶ 14,132. IN OUR OPINION, THE TRADE UNION HAS NOT ESTABLISHED THAT THERE IS ANY AMBIGUITY IN THE LANGUAGE OF THE MASTER AGREEMENT. IT IS OUR DECISION THAT THE EXTRINSIC EVIDENCE WITH RESPECT TO THE INTENTION OF THE TRADE UNION AT THE TIME THE MASTER AGREEMENT WAS SIGNED IS INADMISSIBLE. ON THE SECOND ARGUMENT OF COUNSEL FOR THE TRADE UNION, WE DO NOT AGREE WITH THIS CONTENTION THAT THE FACT OF WHETHER A COLLECTIVE AGREEMENT HAS BEEN APPLIED AFFECTS ITS VALIDITY. ON THE EVIDENCE BEFORE US WE FIND, HOWEVER, THAT THE EMPLOYER DID IN FACT APPLY THE MASTER AGREEMENT TO ITS EMPLOYEES AT HAWKESBURY IN THE BARGAINING UNIT DEFINED IN THE CERTIFICATE OF THE BOARD DATED OCTOBER 14, 1969, DOING SIMILAR OR COMPARABLE WORK TO ITS EMPLOYEES IN OSHAWA, OAKVILLE AND WINDSOR COVERED BY THE MASTER AGREEMENT. WITH RESPECT TO THE THIRD POINT, THE EMPLOYEES AT HAWKESBURY COVERED BY THE MASTER AGREEMENT ARE DEFINED IN THE CERTIFICATE OF THE BOARD DATED OCTOBER 14, 1969 AS CONTEMPLATED BY SECTION 23 OF THE MASTER AGREEMENT. FINALLY, THE COMPLETENESS WITH WHICH A COLLECTIVE AGREEMENT DEFINES AND REGULATES THE RELATIONSHIP BETWEEN AN EMPLOYER, A TRADE UNION AND THE EMPLOYEES COVERED THEREUNDER IS A FUNCTION OF COLLECTIVE BARGAINING AND IS NOT A MATTER IN WHICH THE BOARD INTERFERES PROVIDING, ALWAYS, OF COURSE, THAT THE PROVISIONS OF A COLLECTIVE AGREEMENT ARE NEITHER CONTRARY TO THE LABOUR RELATIONS ACT NOR DEFICIENT IN ANY RESPECT REGARDING THE MANDATORY PROVISIONS OF THE LABOUR RELATIONS ACT. NEITHER OF THESE GROUNDS HAS BEEN ESTABLISHED BY COUNSEL FOR THE TRADE UNION.

13. HAVING REGARD TO THE EVIDENCE BEFORE US AND TO THE REPRESENTATIONS OF COUNSEL, WE FIND THAT THE MASTER AGREEMENT SIGNED ON NOVEMBER 22, 1968 BECAME A COLLECTIVE AGREEMENT EFFECTIVE ON OCTOBER 14, 1969 COVERING THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN THE CERTIFICATE OF THE BOARD DATED OCTOBER 14, 1969. THIS COLLECTIVE AGREEMENT CAME INTO BEING AS A RESULT OF VOLUNTARY RECOGNITION BEING AFFORDED BY THE EMPLOYER TO THE TRADE UNION UPON THE HAPPENING OF AN AGREED EVENT, NAMELY, CERTIFICATION. THE LABOUR RELATIONS ACT CONTEMPLATES THAT BARGAINING RIGHTS MAY BE SECURED BY VOLUNTARY RECOGNITION AND BY CERTIFICATION AND WE FIND NOTHING CONTRARY TO PROVINCIAL LEGISLATION IN THIS AGREEMENT BETWEEN THE EMPLOYER AND THE TRADE UNION IN THIS SITUATION. IT IS OUR OPINION THAT THE EMPLOYER AND THE TRADE UNION WERE ENGAGED IN NEGOTIATING FOR REVISION BY MUTUAL CONSENT OF THE PROVISIONS OF THE COLLECTIVE AGREEMENT OTHER THAN THE PROVISION RELATING TO THE TERM OF ITS OPERATION. HOWEVER, SECTION 39(5) OF THE LABOUR RELATIONS ACT CONTEMPLATES THE REVISION OF A COLLECTIVE AGREEMENT IN THESE MATTERS BY THE MUTUAL CONSENT OF THE PARTIES WITHOUT THE USE OF THE SERVICES OF THE CONCILIATION PROCESS.

14. IT FOLLOWS THAT SINCE THERE IS AN EXISTING COLLECTIVE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE EMPLOYEES AT HAWKESBURY IN THE BARGAINING UNIT DEFINED IN THE CERTIFICATE OF THE BOARD DATED OCTOBER 14, 1969, THAT THE NOTICE GIVEN BY THE TRADE UNION TO THE EMPLOYER IN A LETTER DATED OCTOBER 20, 1969, DOES NOT CONSTITUTE

NOTICE SECTION 11 OR 40 AS CONTEMPLATED BY SECTION 13 OF THE LABOUR RELATIONS ACT.

15. HAVING REGARD TO THE FOREGOING, OUR ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER IS "NO".

DECISION OF BOARD MEMBER P. J. O'KEEFFE APRIL 20, 1970.

THE FACTS IN THIS CASE ARE AS OUTLINED IN THE MAJORITY DECISION.

THERE IS NO DISAGREEMENT BETWEEN THE PARTIES AS TO THE VALIDITY OF EITHER THE MASTER OR LOCAL AGREEMENTS, OR THAT THESE AGREEMENTS APPLY TO THE EMPLOYEES OF THE EMPLOYER IN THE OSHAWA, OAKVILLE AND WINDSOR PLANTS.

THE POINT AT ISSUE IS WHETHER SECTION 23 IN THE MASTER AGREEMENT IS SUFFICIENT TO BRING THE NEWLY ORGANIZED AND CERTIFIED EMPLOYEES IN THE HAWKESBURY PLANT UNDER SUCH COLLECTIVE AGREEMENT AND THEREFORE HAVE SUCH AGREEMENT ACT AS A BAR TO NORMAL STATUTORY REQUIREMENTS AND BENEFITS FOLLOWING CERTIFICATION OF THE HAWKESBURY PLANT.

SECTION 23 OF THE MASTER AGREEMENT READS AS FOLLOWS:

ESTABLISHMENT OF NEW PLANTS

> IN THE EVENT THAT THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AGRICULTURAL IMPLEMENT WORKERS OF AMERICA CLC, IS CERTIFIED AS THE COLLECTIVE BARGAINING AGENT FOR EMPLOYEES AT A NEW PLANT OF THE COMPANY, SAVE AND EXCEPT THOSE EMPLOYEES EXCLUDED BY THE CERTIFICATE, DOING SIMILAR OR COMPARABLE WORK AS THAT DONE BY THE EMPLOYEES COVERED BY THIS AGREEMENT, THEN SUCH AGREEMENT COVERING ALL ITEMS, WHERE APPLICABLE, WILL APPLY TO THE EMPLOYEES OF SUCH PLANT PROVIDING IT IS NOT CONTRARY TO PROVINCIAL LEGISLATION.

(UNDERLINING MINE)

THE FOREGOING SECTION 23 IS AMBIGUOUS. THERE CAN BE NO DOUBT ON THAT SCORE. FOR INSTANCE WHAT IS MEANT BY THE UNDERLINED WORDS 'COLLECTIVE BARGAINING AGENT FOR EMPLOYEES AT A NEW PLANT OF THE COMPANY, SAVE AND EXCEPT THOSE EMPLOYEES EXCLUDED BY THE CERTIFICATE, DOING SIMILAR OR COMPARABLE WORK AS THAT DONE BY THE EMPLOYEES COVERED BY THIS AGREEMENT'.

Does the foregoing mean that the agreement will apply to employees of a new plant of the Company doing similar or comparable work as that done by employees covered by the agreement, or does it mean that the agreement will apply to employees of a new plant, save and except those employees excluded by the certificate, doing similar or comparable work as that done by employees covered by the agreement?

Which employees of a new plant are to be covered by the agreement, and which employees are to be excluded?

What is meant by the words 'doing similar or comparable work'? What is meant by the words 'then such agreement covering all items where applicable, will apply to the employees of such plant'?

I submit that Section 23 is at best very poor draftsmanship, on the face of the language used it is incapable of intelligent interpretation without resource to evidence relating to the intention of the parties who entered into such agreement.

The Union called evidence relating to the intention of the parties at the time of negotiations. From this uncontradicted evidence it is clear that Section 23 was never intended by the parties to preclude the Union from the normal processes of bargaining under the Ontario Labour Relations Act, which would flow following certification of the Union for the employees of the Hawkesbury plant.

The employer had the opportunity to contest the evidence of the Union relating to the intentions of the parties at the time they entered into the collective agreement, however they chose not to avail themselves of this opportunity, and I, therefore, unhesitatingly, accept the sworn, uncontested evidence of the Union on this crucial point.

In light of the foregoing, my answer to the question posed by the Honourable the Minister is "Yes".

17270-69-M: United Electrical, Radio and Machine Workers of America (UE) (Trade Union) v. MARSLAND ENGINEERING LIMITED (Employer).

BEFORE: J. D. O'Shea, Q.C., Vice-Chairman, and Board Members P. J. O'Keeffe and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: Laurence C. Arnold and Ross Russell for the trade union, C. R. Osler, Q.C., and George Ferguson, Q.C., for the employer.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE: April 2, 1970.

1. The Minister has referred to the Board pursuant to the provisions of section 79a of the Act the question as to whether, at the time a certain grievance dated December 1, 1969 was filed, there was a collective agreement between the trade union and the employer.

2. It appeared from the evidence that the trade union was certified to represent certain employees of the employer on May 12, 1969. The parties commenced bargaining for a collective agreement in June 1969 and approximately ten bargaining meetings were held during which the parties agreed to many provisions which were to be contained in a collective agreement. On November 9, 1969, the company made what it described as a final offer to the union. This offer was signed on behalf of the company by S. D. Bowman, a member of the Central Ontario Industrial Relations Institute, who had been the spokesman for the company during negotiations. The company advised the employees of the final offer by a "Company Newsletter" on November 10, 1969. In the newsletter the company advised the employees that it intended to implement the changes in the wages and fringe benefits effective November 10, 1969.

3. On November 11, 1969, the company's proposal was placed before the members of the union for acceptance at a meeting held for that purpose. The notice calling the meeting was headed "Settlement or Strike you will make the decision today by secret ballot". At the meeting, the members were advised that the offer which was placed before them appeared to be the company's final offer and that they had to determine whether or not they wished to accept the offer or were prepared to strike, since bargaining had appeared to reach an impasse. The members were referred to the following provisions of the union's constitution:

> Article 13(3)
>
> Decisions as to strike, termination of strike, and contract settlement, are the property of the affected membership. Adequate arrangements shall be made for reaching the membership involved for their participation in such decisions. However, as a protection for both the Local and National Union it is required that there be a seventy (70%) per cent affirmative secret ballot vote of those participating in the strike vote before a strike is called. The National Executive Board is empowered to waive this rule upon application by a Local Executive Board.

4. The members were accordingly advised that unless 70 per cent of the members present voted in favour of a strike the contract proposed by the company would be deemed to be accepted. When a vote

WAS TAKEN, 256 VOTED IN FAVOUR OF A STRIKE AND 208 VOTED IN FAVOUR OF ACCEPTING THE CONTRACT PROPOSED BY THE COMPANY. WHILE MORE THAN 50 PER CENT OF THOSE VOTING VOTED IN FAVOUR OF A STRIKE, THE RESULTS OF THE VOTE CLEARLY INDICATED THAT THE REQUIRED MAJORITY OF 70 PER CENT FAILED TO SUPPORT STRIKE ACTION AND ACCORDINGLY THE VOTE DETERMINED THAT THE CONTRACT MUST BE ACCEPTED PURSUANT TO THE PROVISIONS OF THE CONSTITUTION REFERRED TO ABOVE. FOLLOWING THE VOTE ON NOVEMBER 11TH, THE COMPANY WAS INFORMED THAT THE EMPLOYEES HAD ACCEPTED THE CONTRACT PROPOSED BY THE COMPANY. HOWEVER, ON NOVEMBER 12TH, THE COMPANY RECEIVED INFORMATION THAT THE MAJORITY OF EMPLOYEES AT THE MEETING HAD VOTED IN FAVOUR OF A STRIKE AND HAD REJECTED THE COMPANY'S PROPOSALS. THE COMPANY APPARENTLY WAS NOT AWARE OF THE PROVISIONS OF THE APPLICANT'S CONSTITUTION REQUIRING 70 PER CENT IN FAVOUR OF STRIKE ACTION. IN VIEW OF THE FACT THAT THE COMPANY BELIEVED THAT A MAJORITY OF THE EMPLOYEES WERE NOT IN FAVOUR OF ACCEPTING THE PROPOSED CONTRACT, THE COMPANY APPARENTLY WAS HESITANT ABOUT EXECUTING A COLLECTIVE AGREEMENT WITH THE UNION ON THE BASIS OF THE PROPOSED CONTRACT.

5. ON NOVEMBER 12, 1969, CERTAIN OFFICIALS OF THE UNION ATTENDED AT THE COMPANY'S OFFICES AND PRESENTED A HANDWRITTEN MEMORANDUM OF SETTLEMENT FOR SIGNATURE. THIS DOCUMENT READS AS FOLLOWS:

> MEMORANDUM OF SETTLEMENT
> BETWEEN
> MARSLAND ENGINEERING LTD.
> AND
> UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) AND ITS LOCAL 557.
>
> THE PARTIES HERETO AGREE THAT TERMS OF A COLLECTIVE AGREEMENT CONTAINING ITEMS AGREED TO BY THE PARTIES PRIOR TO NOV. 9, 1969 AND ITEMS CONTAINED IN DOCUMENT PRESENTED TO THE UNION BY THE COMPANY THROUGH CONCILIATION OFFICER W. MAGUIRE ON NOV. 9, 1969 SHALL FORM THE BASIS OF A COLLECTIVE AGREEMENT FOR A TERM OF TWO YEARS - WITH AN EFFECTIVE DATE OF NOV. 10, 1969.
>
> IN WITNESS WHEREOF THE UNDERSIGNED HAVE EXECUTED THIS AGREEMENT THIS 12TH DAY OF NOVEMBER 1969 AT WATERLOO, ONTARIO.
>
> MARSLAND ENGINEERING LTD. U.E.R. & M.W.A.
>
> _____ _____
>
> _____ _____

_____ U.E.R. & M.W.A.
LOCAL 557

_____

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_____

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_____

_____

THIS DOCUMENT DID NOT BEAR THE SIGNATURES OF ANY OFFICERS OR OFFICIALS OF EITHER THE COMPANY, THE TRADE UNION OR LOCAL 557. MR. MARSLAND ON BEHALF OF THE COMPANY ADVISED THE UNION THAT THE DOCUMENT HAD TO BE CHECKED OVER WITH THE COMPANY'S LAWYERS. ON NOVEMBER 20, 1969, THE PRESIDENT OF THE RESPONDENT WROTE TO THE UNION AND ADVISED THAT THEY WERE DRAFTING AN AGREEMENT WHICH WOULD BE FORWARDED TO THE UNION AFTER IT HAD BEEN CHECKED BY MR. BOWMAN WHO WAS ACTING AT THE TIME AS THE COMPANY'S LABOUR CONSULTANT. THE COMPANY ALSO REQUESTED THAT THE UNION SUPPLY A CHECK-OFF LIST OF EMPLOYEES.

6. DURING THE LATTER PART OF NOVEMBER, THE UNION RECEIVED FROM THE COMPANY A DRAFT DOCUMENT WHICH EMBODIED THE ITEMS PREVIOUSLY AGREED TO. THE UNION CHECKED OVER THE LANGUAGE AND APART FROM MINOR LANGUAGE CHANGES AND THE INCLUSION OF A TERMINATION CLAUSE, THE DRAFT MET WITH THE UNION'S APPROVAL. THE COMPANY ISSUED A DOCUMENT WHICH IS DATED DECEMBER 1, 1969, WHICH DOCUMENT IS HEADED "EMPLOYMENT AND OPERATING POLICY FOR HOURLY RATED EMPLOYEES". THIS DOCUMENT WAS DISTRIBUTED TO ALL EMPLOYEES AND WAS IN SUBSTANTIALLY THE SAME FORM AS THE DRAFT DOCUMENT WHICH HAD BEEN SUBMITTED BY THE COMPANY TO THE UNION DURING THE LATTER PART OF NOVEMBER. THE DOCUMENT ISSUED ON DECEMBER 1, 1969 IS IN THE FORM OF A COLLECTIVE AGREEMENT. IT IS NOTED THAT IT CONTAINS SUCH PROVISIONS AS:

> ARTICLE 1 - RECOGNITION
> THE COMPANY RECOGNIZES THE UNION AS THE EXCLUSIVE BARGAINING AGENT FOR ALL EMPLOYEES OF THE COMPANY AT WATERLOO ...
>
> ARTICLE 2 - MANAGEMENT FUNCTIONS
> THE UNION ACKNOWLEDGES THAT IT IS THE EXCLUSIVE FUNCTION OF THE COMPANY TO:
> (A) MAINTAIN ORDER, DISCIPLINE AND EFFICIENCY ...

IN ADDITION TO THE PROVISIONS REFERRED TO ABOVE, THE EMPLOYMENT AND

Operating Policy for Hourly Rated Employees contains many other references to the union. It is readily apparent that at the time the Policy of December 1, 1969 was issued by the Company, the document was prepared in contemplation of the company and the union signing a collective agreement.

7. There was no document presented to the Board which contained the signatures of officials of the union. Apart from the proposal signed by Mr. Bowman on behalf of the company, none of the documents which contained any of the terms of a proposed collective agreement which had been agreed to bore the signature of any company official.

8. After December 1, 1969, the relationship between the parties deteriorated to the point that the company officials finally stated that they had no intention of signing a collective agreement with the union. Apparently, the company officials believed that the union had lost the support of the employees.

9. The union argued that the memorandum of settlement which was submitted for signature on November 12th was in fact signed by the union since the initials of the union had been printed by hand on the document. Counsel for the union referred to several cases in support of its argument in this matter. It was the union's position that the memorandum of settlement which bore the printed initials of the union coupled with the November 9th offer which was signed by Mr. Bowman on behalf of the company constituted an agreement in writing between the employer and the union, which satisfied the requirements of section 1(1)(c) of The Labour Relations Act. The fact that the company implemented the provisions of the proposed agreement in the manner in which it did and embodied such provisions in the December 1, 1969 Employment and Operating Policy for Hourly Rated Employees was evidence that the company treated the offer as having been accepted by the union. Since the contract was being implemented, the union argued that it should accordingly be treated as a collective agreement within the meaning of section 1(1)(c) of the Act.

10. Assuming but not necessarily finding that the signature of Mr. Bowman constituted a binding offer which if accepted in writing by the union would constitute a collective agreement within the meaning of section 1(1)(c) of The Labour Relations Act, we find that no such written acceptance was delivered to the company by the union.

11. The provisions of section 1(1)(c) of The Labour Relations Act read as follows:

> 1(1) In this Act,
> (c)"collective agreement" means an agreement in writing between an employer or an employers' organization, on the one hand,

> AND A TRADE UNION THAT, OR A COUNCIL OF TRADE UNIONS THAT, REPRESENTS EMPLOYEES OF THE EMPLOYER OR EMPLOYEES OF MEMBERS OF THE EMPLOYERS' ORGANIZATION, ON THE OTHER HAND, CONTAINING PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES OR DUTIES OF THE EMPLOYER, THE EMPLOYERS' ORGANIZATION, THE TRADE UNION OR THE EMPLOYEES;

12. It is readily apparent from the evidence that the parties had agreed to most, if not all, the terms which were to be embodied in a collective agreement. The provisions which had been agreed to would tend to indicate that the parties had contemplated that the collective agreement would be for a term of at least two years, however, the offer signed by Mr. Bowman did not include a duration clause nor did it specify when the agreement would commence. A duration clause is not an essential provision of a collective agreement in view of the provisions of section 39(1) of the Act which provide that a collective agreement shall be for a term of one year from the date it commenced to operate if the term is unspecified. However, where the parties have not agreed to a duration clause during negotiations, a question may arise as to whether bargaining has been completed. If the parties have not evidenced their agreement on all the provisions of a collective agreement by affixing their signatures to the document or documents which contain such provisions, it cannot be said that because it is established that certain provisions have been agreed to, such agreed to provisions constitute a collective agreement within the meaning of section 1(1)(c) of the Act.

13. The nature of collective bargaining usually requires tentative agreement on various terms and provisions which will be included in the final collective agreement. Such agreed to terms do not constitute a collective agreement within the meaning of the Act until they are engrossed in a document signed by the parties to the agreement or are incorporated by reference into such signed agreement. During the course of collective bargaining the terms which receive tentative approval and which are to be incorporated into a collective agreement are usually reduced to writing. Often times such individual terms are signed or initialled by the bargaining parties for the purpose of identification. While the parties may eventually re-engross all the agreed to terms into a formal collective agreement, it is not uncommon for such terms to be embodied into a collective agreement by signing a memorandum of settlement which incorporates by reference all the terms that have been previously agreed to. However, until such time as the parties complete their negotiations by resolving all outstanding issues and bring their bargaining to an end, it cannot be said that a collective agreement has been consummated. Provisions which have received tentative approval are often deleted or changed in the light of some subsequent provision which is negotiated. Until the parties have finally agreed on all the provisions to be contained in the collective agreement and have documented

THEIR AGREEMENT AND HAVE AGREED ON THE DATE OF COMMENCEMENT AND THE TERM OF OPERATION OR DURATION OF THE AGREEMENT AND HAVE EVIDENCED THE EXISTENCE OF THEIR AGREEMENT BY AFFIXING THEIR SIGNATURES TO THE DOCUMENT OR DOCUMENTS WHICH EMBODIES ALL THE PROVISIONS AGREED TO, IT CANNOT BE SAID THAT THE PARTIES HAVE EXECUTED AN AGREEMENT IN WRITING WHICH CAN BE CHARACTERIZED AS A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(c) OF THE ACT. IT MAY BE THAT AT COMMON LAW THE PARTIES MAY HAVE AN ENFORCEABLE CONTRACT IF THE DOCTRINE OF PART PERFORMANCE OR ESTOPPEL APPLIES, HOWEVER, SUCH COMMON LAW CONTRACT IS NOT NECESSARILY A "COLLECTIVE AGREEMENT" WITHIN THE MEANING OF THE ACT.

14. THE FACTS OF THIS CASE CLEARLY DISCLOSE THAT THE UNION ON AND AFTER NOVEMBER 12TH ATTEMPTED TO CAUSE THE COMPANY TO EXECUTE A COLLECTIVE AGREEMENT BY SIGNING A DOCUMENT WHICH WOULD INCORPORATE ALL THE PROVISIONS WHICH HAD BEEN NEGOTIATED. THE COMPANY REFUSED TO SIGN SUCH DOCUMENT.

15. WHILE MR. BOWMAN HAD SIGNED AN OFFER ON BEHALF OF THE COMPANY WHICH APPEARED TO PROVIDE THAT THE TERMS AND CONDITIONS WOULD BE APPLIED OVER A TERM OF AT LEAST TWO YEARS, NO DATE OF COMMENCEMENT AND NO DURATION CLAUSE WAS INCLUDED IN THE OFFER MADE BY MR. BOWMAN. EVEN IT THESE DEFECTS WERE NOT TO BE CONSIDERED FATAL IN VIEW OF OTHER PROVISIONS OF THE OFFER, THE OFFER WAS NEVER ACCEPTED IN WRITING BY THE UNION. ALTHOUGH IT WAS ARGUED ON BEHALF OF THE UNION THAT THE PRINTED INITIALS OF THE UNION ON THE MEMORANDUM OF SETTLEMENT QUOTED ABOVE CONSTITUTED WRITTEN ACCEPTANCE BY THE UNION, WE ARE UNABLE TO ACCEPT THAT ARGUMENT. IT IS READILY APPARENT FROM THE FACE OF THE DOCUMENT THAT THE UNION INTENDED THAT THE DOCUMENT BE EXECUTED BY THE SIGNATURES OF UNION OFFICIALS SINCE SPECIFIC PROVISION WAS MADE UNDER THE INITIALS OF THE UNION FOR SUCH SIGNATURES. SIMILARLY, SPACE WAS PROVIDED FOR THE SIGNATURES OF THE COMPANY OFFICIALS UNDER THE COMPANY NAME. IN THE ABSENCE OF CLEAR EVIDENCE THAT IT WAS THE REGULAR PRACTICE OF THE UNION TO EXECUTE DOCUMENTS BY SIMPLY IMPRINTING THE UNION'S INITIALS ON THE DOCUMENT OR EVIDENCE THAT THE NECESSARY AUTHORITY IS CONTAINED IN THE UNION'S CONSTITUTION OR BY-LAWS TO EXECUTE DOCUMENTS IN THIS MANNER, WE ARE NOT PREPARED TO ACCEPT SUCH INITIALS AS EVIDENCE OF THE EXECUTION OF THE DOCUMENT BY THE UNION. OUR FINDINGS IN THIS REGARD ARE SUBSTANTIATED BY THE EVIDENCE THAT THE UNION OFFICIALS REFUSED TO PROVIDE THE COMPANY WITH A LIST OF ITS MEMBERS UNTIL SUCH TIME AS A COLLECTIVE AGREEMENT HAD BEEN SIGNED. THIS LIST WHICH HAD BEEN REQUESTED BY THE COMPANY FOR PURPOSES OF CHECK-OFF WAS NEVER GIVEN TO THE COMPANY EVEN THOUGH IT WAS AVAILABLE AT THE TIME THE MEMORANDUM OF SETTLEMENT WAS SUBMITTED FOR EXECUTION.

16. WHILE IT APPEARS THAT ALL THE PROVISIONS THAT HAD BEEN NEGOTIATED WERE REDUCED TO WRITING BY THE COMPANY, THIS FACT ALONE DOES NOT PERMIT THE BOARD TO FIND THAT SUCH WRITINGS CONSTITUE A COLLECTIVE AGREEMENT. THE DEFINITION OF A COLLECTIVE AGREEMENT CONTAINED IN SECTION 1(1)(c) NOT ONLY CONTEMPLATES THAT THE TERMS OR CONDITIONS OF

EMPLOYMENT, ETC. BE IN WRITING BUT THE DEFINITION ALSO REQUIRES THAT A COLLECTIVE AGREEMENT BE AN "AGREEMENT" IN WRITING. ACCORDINGLY, THE ACT REQUIRES THAT THE WRITTEN TERMS OR CONDITIONS OF EMPLOYMENT, ETC. MUST BE AGREED TO IN WRITING. THE ONLY WAY THAT AN INDIVIDUAL CAN EVIDENCE HIS AGREEMENT IN WRITING IS BY SIGNING HIS NAME OR PERHAPS BY SIGNING HIS INITIALS TO A DOCUMENT WHICH CONTAINS OR IDENTIFIES THE PROVISIONS AGREED TO IN SUCH A MANNER THAT HIS INTENT TO CONSUMMATE THE AGREEMENT IS CLEAR. IN ORDER THAT A COMPANY OR A UNION MAY BE SAID TO HAVE EXECUTED AN AGREEMENT IN WRITING, IT IS NECESSARY THAT THE PROVISIONS OF THE AGREEMENT BE DOCUMENTED AND THE FACT THAT SUCH PROVISIONS HAVE BEEN AGREED TO MUST BE EVIDENCED BY THE EXECUTION OF THE DOCUMENT IN THE MANNER PRESCRIBED BY THE ORGANIZATION'S BY-LAWS OR CONSTITUTION OR BE SIGNED ON BEHALF OF THE ORGANIZATION BY THE PROPER OFFICERS OR OFFICIALS OF THE ORGANIZATION.

17. THE BOARD HAS CONSIDERED THE PROVISIONS OF SECTION 1(1)(c) OF THE ACT IN OTHER CASES AND HAS CONSISTENTLY INTERPRETED THE REQUIREMENT THAT IN ORDER THAT AN AGREEMENT BE A COLLECTIVE AGREEMENT IT MUST BE "AN AGREEMENT IN WRITING" AND THAT IT MUST THEREFORE BE SIGNED BY THE PARTIES TO THE AGREEMENT. THE BOARD'S LEADING CASE ON THIS SUBJECT IS THE UNITED STEELWORKERS OF AMERICA AND CANADA MACHINERY CORPORATION LIMITED, 61 CLLC ¶16,194. IN THAT CASE, THE BOARD STATED IN PART AS FOLLOWS:

> PRIMA FACIE, THEREFORE, IT WOULD APPEAR THAT WHERE THE EXPRESSION "AGREEMENT IN WRITING" IS USED UNDER SECTION 1(1)(c), IT MEANS AN EXECUTED OR SIGNED WRITING--EXECUTED OR SIGNED BY ALL PARTIES.

THE BOARD'S INTERPRETATION OF THIS PHRASE IS SUPPORTED BY A RECENT DECISION IN REGINA V. DAVIDSON RUBBER CO. INC. [1970] 1 O.R. 6 AT PAGE 20, WHEREIN THE COURT STATED AS FOLLOWS:

> AN EMPLOYER REVEALS BAD FAITH IF HE REFUSES TO SIGN AN AGREEMENT AND FAILS TO INFORM THE UNION AS TO HIS REASONS FOR NOT SIGNING.

18. THERE IS NO INSTRUMENT OR DOCUMENT OR EXCHANGE OF WRITTEN COMMUNICATIONS BETWEEN THE PARTIES TO THESE PROCEEDINGS WHICH BEAR THE SIGNATURES OF THE OFFICERS OR OFFICIALS OF BOTH PARTIES. WE THEREFORE FIND THAT ON DECEMBER 1, 1969 THE TRADE UNION AND THE EMPLOYER WERE NOT PARTIES TO A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(c) OF THE ACT COVERING THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED.

19. IN REPLY TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER UNDER THE PROVISIONS OF SECTION 79A OF THE ACT, WE MUST ACCORDINGLY ADVISE THE MINISTER THAT THERE WAS NO COLLECTIVE AGREEMENT ON FOOT BETWEEN THE PARTIES ON DECEMBER 1, 1969 AND THEREFORE THE MINISTER HAS NO AUTHORITY TO MAKE THE APPOINTMENT OF A NOMINEE FOR THE EMPLOYER ON A BOARD OF ARBITRATION UNDER SECTION 34(4) OF THE ACT AS REQUESTED BY THE

TRADE UNION.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: APRIL 2, 1970.

WHILE I AM IN AGREEMENT WITH THE ULTIMATE CONCLUSION REACHED BY MY COLLEAGUES, I AM NOT IN AGREEMENT WITH SOME OF THE LANGUAGE CONTAINED THEREIN. IN PARTICULAR, I QUAERE THE RELEVANCY OF THE STATEMENT FROM REGINA V. DAVIDSON RUBBER CO. INC. [1970] 1 O.R. 6, AS SET OUT IN PARAGRAPH 17 OF THE MAJORITY DECISION.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

17224-69-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA LOCAL UNION 46 (APPLICANT) V. NADECO LIMITED (RESPONDENT) V. CHRISTIAN LABOUR ASSOCIATION OF CANADA (INTERVENER).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

DECISION OF THE BOARD; APRIL 30, 1970.

1. THIS IS A REQUEST BY THE APPLICANT, HEREINAFTER REFERRED TO AS "LOCAL 46", FOR THE BOARD TO RECONSIDER ITS DECISION OF APRIL 10, 1970 DIRECTING THAT A REPRESENTATION VOTE BE TAKEN IN A VOTING CONSTITUENCY SET OUT IN PARAGRAPH 7 OF THAT DECISION. THE BOARD DIRECTED THAT VOTERS BE GIVEN A CHOICE BETWEEN LOCAL 46 AND THE INTERVENER, HEREINAFTER REFERRED TO AS THE "CLAC".

2. IN THE REQUEST FOR RECONSIDERATION IT IS ACKNOWLEDGED THAT DURING THE COURSE OF EARLIER HEARINGS IN THIS MATTER COUNSEL FOR THE APPLICANT ASKED THE BOARD TO DIRECT A REPRESENTATION VOTE. THE PARTIES WERE AFFORDED EVERY OPPORTUNITY TO MAKE THEIR REPRESENTATIONS ON ALL ISSUES TO THE BOARD. AT NO TIME DURING THE HEARINGS WAS IT EVER SUGGESTED BY ANYONE THAT LOCAL 46 SHOULD RECEIVE OUTRIGHT CERTIFICATION. ALL MATTERS REFERRED TO IN THE REQUEST FOR RECONSIDERATION COULD HAVE BEEN RAISED AT THE HEARING HELD ON MARCH 23, 1970. THUS, FOR EXAMPLE, ACCORDING TO THE SECTION 65 COMPLAINT FILED ALONG WITH THE REQUEST FOR RECONSIDERATION, THE DISCHARGE AND LAY-OFFS COMPLAINED ABOUT OCCURRED BEFORE MARCH 23. LOCAL 46 THEREFORE CANNOT ALLEGE THAT IT HAS NEW EVIDENCE OR EVIDENCE WHICH IT COULD NOT HAVE REASONABLY DISCOVERED BEFORE THE LAST HEARING. CERTAINLY ALL THE ARGUMENTS IT NOW RAISES COULD HAVE BEEN MADE ON MARCH 23. THESE CIRCUMSTANCES ALONE, THEN, DO NOT IN OUR OPINION MAKE IT ADVISABLE TO RECONSIDER OUR DECISION AT THIS TIME.

3. IN ITS REQUEST FOR RECONSIDERATION LOCAL 46 MAKES THE STATEMENT THAT THE INITIAL APPLICATION WAS PROCESSED IN THE EXPECTATION THAT THERE WOULD BE AUTOMATIC CERTIFICATION. THE APPLICATION

itself makes it quite clear that Local 46 was aware of the fact that the CLAC held bargaining rights for the employees affected by the application. It has been the invariable practice of the Board, where one trade union seeks to displace another, to order a representation vote with the two unions' names being included on the ballot. This has been the case for construction industry as well as industrial applications. We are unable to recall a single instance where a vote has not been ordered except where the incumbent union has abandoned its bargaining rights or the Board has acted under the provisions of section 7(5) of the Labour Relations Act. See Thomas Fuller Construction Company Limited, OLRB M.R. May, 1963, p. 108; Canada Sand Paper Ltd., CCH Canadian Labour Law Reporter Transfer Binder 1955'59, Paragraph 16,111.

There was no suggestion that either of these exceptions applied to the circumstances of this case at the time the application was filed and we are accordingly at a loss to understand how Local 46 expected outright certification. We should perhaps point out that the request for reconsideration does not raise section 7(5) of the Labour Relations Act or allege that the true wishes of the employees are not likely to be disclosed by a representation vote. The main thrust of the request revolves around the nature of the construction industry and the arguments advanced are ones which are well known to the Board. In these circumstances, we see no reason at this time for departing in this case from our practice of ordering a representation vote and that direction will therefore stand.

4. In its request for reconsideration Local 46 refers to the fact that Form 49, Application for Certification, Construction Industry, does not contain the pre-hearing vote option. The applicant's attention is directed to the second note and comment at the end of the form which provides:

> 2. This form is NOT to be used where the applicant desires a pre-hearing representation vote. If the applicant desires a pre-hearing representation vote to be taken, use Form 1. See section 3 of the Board's Rules of Procedure.

5. If the Board should not accede to the request for outright certification, Local 46 requests the Board to reconsider its decision with respect to the eligibility date for voters. This matter could also have been raised in argument at the March 23rd hearing. It was not and we therefore see no ground for reconsidering our decision on this point. Counsel refers to the Board decision dealing with a similar request in J. McLeod and Sons Limited, OLRB M.R. Dec. 1969, p. 1100. If Local 46 wished to question that decision, the time to have done so was at the last hearing when the Board could have had full representations from all parties. The request for reconsideration on this ground is also denied. It should perhaps be pointed

OUT THAT IF LOCAL 46 HAD APPLIED FOR A PRE-HEARING REPRESENTATION VOTE, AS WAS CERTAINLY OPEN TO IT TO DO, THE VOTE IN THIS CASE WOULD IN ALL LIKELIHOOD HAVE BEEN TAKEN MONTHS AGO.

6. AS A RESULT OF CHALLENGES TO THE PROPOSED VOTERS' LIST BY LOCAL 46, QUESTIONS HAVE ARISEN CONCERNING THE RIGHT TO VOTE OF A NUMBER OF EMPLOYEES. THESE QUESTIONS CANNOT BE DECIDED WITHOUT THE APPOINTMENT OF AN EXAMINER. IN ADDITION, LOCAL 46 HAS FILED A COMPLAINT UNDER SECTION 65 OF THE ACT, THE ULTIMATE RESOLUTION OF WHICH MAY AFFECT THE RIGHT TO VOTE OF A NUMBER OF PERSONS. THE BOARD HAS BEEN INFORMED BY THE CLAC AND THE RESPONDENT THAT THE JOB IN QUESTION MAY BE COMPLETED BY THE END OF MAY. AFTER DUE CONSIDERATION WE HAVE COME TO THE CONCLUSION THAT THE REPRESENTATION VOTE SHOULD BE TAKEN AS SOON AS POSSIBLE. IN CONNECTION THEREWITH THE BOARD ISSUED THE FOLLOWING DIRECTIONS:

(1) THE REGISTRAR OR HIS APPOINTEE IS TO MEET WITH THE PARTIES FORTHWITH TO SETTLE THE DIRECTION FOR THE VOTE.

(2) ALL PERSONS WISHING TO CAST A BALLOT SHALL BE PERMITTED TO DO SO AND, IF CHALLENGED BY ANY PARTY, THEIR BALLOTS WILL BE SEGREGATED.

(3) UPON COMPLETION OF THE VOTE THE BALLOT BOX WILL BE SEALED, PENDING FURTHER DIRECTION BY THE BOARD.

(4) MR. A. A. MORROW IS APPOINTED AN EXAMINER TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF W. HARRIS, MENT SPAANS, FRANCESCO SCARAMOZZINO, RUDOLF STIENBRENNER, EUGENIO ADAMO AND RAYMOND C. ALEXANDER AND TO REPORT TO THE BOARD THEREON. THE EXAMINER IS DIRECTED FURTHER TO INQUIRE INTO THE ALLEGATION THAT FRANCESCO SCARAMOZZINO, RUDOLF STIENBRENNER AND EUGENIO ADAMO "WERE NOT EMPLOYEES IN THE BARGAINING UNIT AREA AT THE OPERATIVE TIME" AND INTO THE EMPLOYMENT STATUS OF WILLIAM J. CRITCHFIELD, MUZAFFER YAZICE AND THOMAS LITTLEJOHN.

7. THE MATTER IS REFERRED TO THE REGISTRAR.

17233-69-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, LOCAL 325 ETOBICOKE ONTARIO AND VICINITY (APPLICANT) v. BARTON DISTILLING (CANADA) LIMITED (RESPONDENT) v. DISTILLERY, RECTIFYING, WINE AND ALLIED WORKERS' INTERNATIONAL UNION OF AMERICA, AFL-CIO, CLC (INTERVENER #1) v. CANADIAN UNION OF OPERATING ENGINEERS, ON BEHALF OF ITS LOCAL 104 (INTERVENER #2).

BEFORE: J. D. O'Shea, Q.C., Vice-Chairman, and Board Member P. J. O'Keeffe and J.E.C. Robinson, Q.C.

DECISION OF THE BOARD: April 9, 1970.

1. Intervener #1, by letter dated April 7, 1970, has requested the Board to reconsider its decision dated April 1, 1970, wherein the Board certified the applicant as bargaining agent for certain employees of the respondent. At the hearing in this matter, intervener #1 requested the Board to hold this matter in abeyance pending a decision by the Canadian Labour Congress with respect to a jurisdictional complaint which had apparently been filed by intervener #1. The applicant opposed the request of intervener #1. The Board ruled that it was not prepared to grant the request of intervener #1 to postpone consideration of this matter. Intervener #1 by its letter of April 7th has renewed its request.

2. The Board has been given jurisdiction under The Labour Relations Act with respect to certification matters. If a party seeks certification under the Act and satisfies all the requirements of the Act, the Board has no jurisdiction to withhold or deny the relief sought. The Board does not exercise its jurisdiction under The Labour Relations Act in certification matters subject to the Canadian Labour Congress or any other organization. Had the Board granted the request of intervener #1, when such request was opposed by the applicant, the Board would thereby have abrogated the provisions of the Act by agreeing to exercise its jurisdiction subject to the decision of the Canadian Labour Congress. This the Board is not prepared to do.

3. For the above reasons, the Board is of opinion that it should not vary or revoke its decision dated April 1, 1970, in this matter, and the request of intervener #1 is accordingly denied.

17320-69-R: Oil, Chemical and Atomic Workers International Union (Applicant) v. Shell Canada Limited (Respondent) v. Shell Employees' Association (Sarnia Refinery) (Intervener).

BEFORE: J. D. O'Shea, Q.C., Vice-Chairman, and Board Members O. Hodges and R. W. Teagle.

DECISION OF THE BOARD: April 9, 1970.

1. The respondent by letter dated March 23, 1970 has requested the Board to review its decision and exclude "students employed during the school vacation period" from the bargaining unit determined by the Board to be appropriate in its decision dated March 18, 1970, in this matter, on the basis that the applicant and the respondent had agreed to this exclusion at the pre-hearing vote meeting. The applicant does not oppose the respondent's request.

2. The Board notes that the category which the parties propose

TO EXCLUDE WAS INCLUDED IN THE BARGAINING UNIT REPRESENTED BY THE INCUMBENT UNION AT THE TIME THIS APPLICATION WAS MADE. SINCE CONFUSION MIGHT ARISE AS TO WHETHER THE INCUMBENT CONTINUES TO REPRESENT THE STUDENTS IF THEY WERE EXCLUDED FROM THE BARGAINING UNIT FOR WHICH THE APPLICANT WAS CERTIFIED, THE BOARD DID NOT GIVE EFFECT TO THE AGREEMENT OF THE PARTIES TO EXCLUDE THE CLASSIFICATION OF STUDENTS.

3. IF THE PARTIES WISH TO GIVE EFFECT TO THEIR AGREEMENT TO EXCLUDE STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD FROM THE ALL-EMPLOYEE BARGAINING UNIT REPRESENTED BY THE APPLICANT, THEY MAY DO SO IN COLLECTIVE BARGAINING AND ENTER INTO A COLLECTIVE AGREEMENT WHICH EXCLUDES SUCH STUDENTS.

4. IN THE CIRCUMSTANCES OF THIS CASE, HOWEVER, AND FOR THE REASONS SET OUT ABOVE, THE BOARD DOES NOT DEEM IT ADVISABLE TO VARY OR REVOKE ITS DECISION OF MARCH 18, 1970, AS REQUESTED BY THE RESPONDENT, AND THE RESPONDENT'S REQUEST FOR REVIEW IS ACCORDINGLY DENIED.

17339-69-R: DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164 AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (APPLICANT) v. CANRON LIMITED (RESPONDENT).

BEFORE: O.B.SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS H.F. IRWIN AND P.J. O'KEEFFE.

DECISION OF THE BOARD: APRIL 28, 1970.

1. THE BOARD RECEIVED CORRESPONDENCE FROM THE SOLICITOR FOR THE RESPONDENT REQUESTING THAT THE BOARD CLARIFY ITS DECISION DATED MARCH 12TH, 1970, AND IN THE ALTERNATIVE TO AMEND THE CERTIFICATE.

2. AT THE HEARING IT APPEARED FROM THE SUBMISSIONS AND REPRESENTATIONS OF THE PARTIES THAT THERE WAS AN ENTITY KNOWN AS JOINT VENTURE WHICH WAS RELATED IN CERTAIN RESPECTS TO THE RESPONDENT COMPANY. HOWEVER, IT APPEARED FROM THE LIST OF EMPLOYEES FILED BY THE RESPONDENT AND THE SUBMISSIONS MADE AT THE HEARING THAT THE ENTITY KNOWN AS JOINT VENTURE WAS A SEPARATE ENTITY AND THEREFORE IT WAS NOT THE BOARD'S INTENTION TO INCLUDE EMPLOYEES OF JOINT VENTURE IN THE CERTIFICATE WHICH IT ISSUED AS A RESULT OF THE DECISION OF MARCH 12TH, 1970.

3. IF THE FACTS REPRESENTED BY THE RESPONDENT INCLUDING THE LIST OF EMPLOYEES ARE ACCURATE THEN THE CERTIFICATE ISSUED WHICH COVERS ONLY THE EMPLOYEES OF THE RESPONDENT COMPANY IN NO WAY AFFECTS THE SEPARATE ENTITY KNOWN AS JOINT VENTURE.

4. THE RESPONDENT HAS ALSO MADE REFERENCE TO AN AGREEMENT BEFORE THE BOARD TO EXCLUDE REINFORCING ROD DRAFTSMEN FROM THE "ALL DRAFTSMEN" UNIT WHICH THE BOARD HAS FOUND TO BE APPROPRIATE. THE

BOARD HAS SEARCHED ITS NOTES AND FOUND NO RECORD OF AN AGREEMENT TO EXCLUDE REINFORCING ROD DRAFTSMEN FROM THE BARGAINING UNIT; AND IT FURTHER APPEARS THAT THE PARTIES WERE NOT IN AGREEMENT WITH RESPECT TO THE REINFORCING ROD DRAFTSMEN.

5. THE BOARD IN ARRIVING AT ITS DECISION CONSIDERED THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE REINFORCING ROD DRAFTSMEN AND IN THE CIRCUMSTANCES OF THIS CASE THE BOARD WAS OF THE OPINION THAT THEIR EXCLUSION MIGHT RESULT IN UNDUE FRAGMENTATION OF THE BARGAINING UNIT. ACCORDINGLY, IT WAS THE INTENT OF THE BOARD TO INCLUDE THOSE PERSONS IN THE CERTIFICATE ISSUED PURSUANT TO THE DECISION OF MARCH 12TH, 1970.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - TERMINATION

17480-69-R: LAY EMPLOYEES OF SCARBOROUGH CENTENARY HOSPITAL ASSOCIATION (APPLICANT) v. THE CANADIAN UNION OF GENERAL EMPLOYEES (RESPONDENT) v. SCARBOROUGH CENTENARY HOSPITAL ASSOCIATION (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

DECISION OF THE BOARD:

1. SUBSEQUENT TO THE BOARD'S DECISION OF APRIL 27, 1970, THE BOARD RECEIVED A LETTER FROM COUNSEL FOR THE INTERVENER OBJECTING TO THE APPLICANT'S REQUEST FOR LEAVE TO WITHDRAW THIS APPLICATION. COUNSEL FOR THE INTERVENER REQUESTED THE BOARD TO DETERMINE WHETHER THE APPLICANT'S REQUEST REPRESENTED THE WISHES OF THE EMPLOYEES WHO HAD SIGNED THE PETITION IN SUPPORT OF THE APPLICATION.

2. THE REQUEST TO WITHDRAW THE APPLICATION WAS MADE BY MESSRS. KIMBER, DUBIN, MORPHY AND BRUNNER, WHO WERE THE APPLICANT'S SOLICITORS ON RECORD. THE BOARD, IN ACCORDANCE WITH ITS USUAL PRACTICE IN SIMILAR CASES, DENIED THE APPLICANT'S REQUEST AND DISMISSED THE APPLICATION. THE BOARD HAS NO JURISDICTION TO PROCESS AN APPLICATION FOR TERMINATION AND CONDUCT A REPRESENTATION VOTE WHEN THE APPLICANT HAS REQUESTED LEAVE TO WITHDRAW ITS APPLICATION. IN A CASE WHERE AN APPLICANT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF A UNION REQUESTS LEAVE TO WITHDRAW, THERE IS NOTHING IN THE LABOUR RELATIONS ACT WHICH WOULD AUTHORIZE THE BOARD TO CONDUCT A REPRESENTATION VOTE TO ASCERTAIN WHETHER SUCH ACTION IS IN ACCORD WITH THE WISHES OF THE EMPLOYEES WHO HAD ORIGINALLY SUPPORTED THE APPLICATION. THE SAME SITUATION PERTAINS IN THE CASE WHERE AN APPLICANT FOR CERTIFICATION REQUESTS LEAVE TO WITHDRAW. IN SUCH CASE, THE BOARD HAS NO JURISDICTION TO CANVASS THE UNION MEMBERS TO ASCERTAIN WHETHER THEY SUPPORT THE UNION'S REQUEST FOR WITHDRAWAL.

3. Since the Board was satisfied that Messrs. Kimber, Dubin, Morphy and Brunner made the request for leave to withdraw on behalf of the applicant, the Board acted on that request. The Board therefore does not deem it advisable to vary or revoke its decision of April 27, 1970 dismissing the application in this matter.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION - SECTION 79(1)

16760-69-R: Christian Labour Association of Canada (Applicant) v. Sandercock Construction Limited (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener).

BEFORE: G. W. Reed, Q.C., Chairman, and Board Members E. Boyer and R. W. Teagle.

APPEARANCES AT THE HEARING: W.I.C. Binnie, T.J. Dunne and J. Vanderlaan for the applicant; no one appearing for the respondent; and R. Koskie and H.B. Gillis for the intervener.

DECISION OF THE BOARD: April 21, 1970.

1. This is a request by the Intervener, hereinafter referred to as "Local 793", under section 79(1) of the Act asking the Board to revoke its decision dated October 6, 1969 certifying the applicant, hereinafter referred to as the "CLAC", for a group of respondent's employees in the County of Lambton. The application by the CLAC fell under the construction industry provisions of the Act and the Board did not find it necessary to hold a hearing in connection with the initial application. In its reasons for decision dated October 6, 1969 the Board said:

> Local 793, The International Union of Operating Engineers, has intervened in this application. However, there is nothing in the intervention which would substantiate a claim of status in these proceedings. Further, although vague allegations of unfair labour practices are made, no particulars of any kind are given, in these circumstances the Board finds that no weight can be attached to the submissions of the intervener.

2. Following the issuance of the certificate, Local 793 requested the Board in a letter dated October 10, 1969 to re-open the matter and permit it to adduce evidence concerning alleged irregularities relating to the membership evidence filed by the CLAC. Among other things it was alleged that J. Ethier, an employee of the respondent, made loans to other employees (unnamed) in order to enable them to pay their initiation fees to the CLAC. A copy of this letter was forwarded to the applicant and came to the attention of its Ontario representative, John Vanderlaan, in October. The CLAC disputed the allegations and also took the position that Local 793 should not at this stage of the proceedings be permitted to raise such issues. The matter was accordingly put on for hearing to enable the parties to make oral representations to the Board on their respective positions.

3. Unfortunately, the case could not be heard until December 8, 1969 because of the illness of one of the members of the panel. Following the hearing the Board issued a decision dated January 12, 1970 in which reasons were given denying Local 793 the right to pursue certain of its allegations. However, the decision stated that it was the Board's intention to inquire into the allegation of non-pay against one employee, Penhale. The parties were notified that J. Ethier and Vanderlaan had also been summonsed to appear. The hearing originally scheduled for February 6, 1970 did not take place until March 6, at the request of counsel for the parties.

4. At that hearing Ethier, under cross-examination, admitted making loans to eight persons in all, four of whom, including Penhale, were employees in the bargaining unit covered by the certificate dated October 6, 1969. As a result, the proceedings were adjourned to permit the Board to investigate these disclosures in its customary manner. The case was re-listed for hearing in Sarnia on April 6, 1970, at which time the Board heard all the remaining evidence, together with the representations of the parties.

5. It is not necessary in the view we take of this matter to recite all the evidence or deal with all the arguments of the parties. For present purposes it is sufficient to set out the following evidence: Vanderlaan met with some 16 employees of the respondent (not all of whom were involved in the present application) at a motel in Sarnia on September 23, 1969 for the purpose of signing up those who wished to join the CLAC. Vanderlaan addressed the group, telling them, among other things, that the initiation fee was $10.00. Those who wished to join were then invited to approach the desk where Vanderlaan was located. Vanderlaan took the necessary information from each employee and filled in an application card (except for the name of the employer and the amount paid) which the employee then signed. The employee also signed a card in blank, Vanderlaan explaining to each employee that the information on the other card would be typed onto the blank card and this latter card would be forwarded to the Board with the application for certification. The original cards were retained by the CLAC. Some of these cards were filed with the Board at the last hearing, and it would appear that the name of the employer and the amount paid was typed onto these cards the following day. The blank cards were also filled in the following day and were the ones filed with the Board.

6. Three employees involved in this application borrowed the $10.00 initiation fee from J. Ethier, a working foreman included in the bargaining unit. One of the three, Penhale, asked Ethier for the money prior to going up to sign an application card. There was no arrangement made to repay the money. Penhale said he would pay Ethier as soon as he got the money, but he subsequently did not offer on his own to repay Ethier. He testified he did not see Ethier much and when he did, he did not have the money. Sometime early in February Ethier asked him for the money for the first time and he repaid Ethier about two weeks prior to the March 6th hearing in this case. A second employee, Timmers, gave

similar testimony. However he repaid Ethier about a month after the meeting. Ethier's evidence was in substantial agreement with that of Penhale and Timmers.

7. The third employee, Garside, testified that he signed a card for Vanderlaan but did not hand him any money. After he signed the card he spoke to Ethier and told him he could pay and he and three other employees could then leave because they had a 40-mile drive to their homes. There was no discussion about repayment. Ethier did not mention it. Garside told him he would pay him back but nothing was said about when. Ethier asked him to repay some six weeks to two months prior to the last hearing (April 6) and again two weeks prior to that hearing. Garside repaid Ethier on April 6 prior to the hearing. Ethier's evidence confirms part of Garside's testimony. In addition, Ethier testified that he paid for Garside when he paid his own fee. He told Vanderlaan that he was paying for Garside, that this was Garside's initiation fee and his own fee. There is no direct evidence as to when Ethier handed over this money except that it was after Garside had left. Vanderlaan recalled Ethier giving him another $10.00 and he said he must have noted down whom it was for. He testified further that when he had completed Garside's card he looked up and he was gone. He said further that Ethier told him the other $10.00 was paid by Garside. He did not see Garside hand money to Ethier. Vanderlaan also testified that he was unaware of any loans being made by Ethier or anyone else and the first knowledge he had of allegations of this nature was when he received a copy of the letter dated October 10 referred to above.

8. As was pointed out years ago in the R.C.A. Victor Company Ltd. Case, 53 CLLC, Paragraph 17, 067 at pp. 1469-70:

> ...The Board cannot accept as evidence of payment anything in the nature of a monetary contribution from a person other than an applicant for membership. The money payment constitutes confirmatory evidence of the desire of the payer to become a member of the trade union. If no financial sacrifice is made by the person himself, the only evidence submitted on his behalf is a signature on an application card which the Board has long since held to be inadequate to establish membership. On the other hand, not every loan to a prospective member, especially where the money is repaid, will be fatal to an applicant's case.

The first question we pose, then, is this, can it be said that there was a financial sacrifice on the part of Penhale and Garside at the time they signed application cards for Vanderlaan? The two situations are strikingly similar. Each borrowed $10.00 from Ethier. There was no discussion about repayment other than a vague promise to repay. There was

NO OFFER TO REPAY BY EITHER PENHALE OR GARSIDE AND NO ATTEMPT BY ETHIER TO COLLECT UNTIL MONTHS AFTER THE LOANS WERE MADE AND THEN ONLY AFTER THE PERSONS IN QUESTION WERE UNDER NOTICE THAT THE BOARD WAS INQUIRING INTO THE MATTER.

9. IN THE HERSHEY CHOCOLATE OF CANADA, LIMITED CASE, OLRB M.R. MAY, 1963, P. 73, AN EMPLOYEE ACCEPTED A DOLLAR FROM ANOTHER EMPLOYEE WITH WHICH SHE PAID HER MEMBERSHIP FEE. SHE REPAID THE DOLLAR AFTER BEING SERVED WITH A SUMMONS TO ATTEND A BOARD HEARING. THE BOARD FOUND SHE DID NOT INTEND TO REPAY THE DOLLAR AT THE TIME THE LOAN WAS MADE AND DISCOUNTED THE CARD IN QUESTION.

IN THE TILLSONBERG SHOE CO. CASE, OLRB M.R. JUNE, 1964, P. 142, AN EMPLOYEE CANVASSER LENT A DOLLAR TO AN EMPLOYEE APPLYING FOR MEMBERSHIP IN THE UNION. THE EMPLOYEE PROMISED TO REPAY AND THE BOARD FOUND THAT THE CANVASSER LENT THE EMPLOYEE THE MONEY IN GOOD FAITH, EXPECTING HER TO REPAY IT, WHICH, HOWEVER, SHE DID NOT. THE EMPLOYEE'S CARD WAS NOT COUNTED.

FINALLY, IN THE SKENE CARTAGE COMPANY LIMITED, OLRB M.R. APRIL, 1966, P. 30, THERE WAS A FINDING THAT THE INITIATION FEES SUBMITTED TO THE UNION INVOLVED IN THAT CASE FOR FIVE EMPLOYEES WERE BONA FIDE LOANS AND ALL FIVE HAD AGREED AT THE TIME THE LOANS WERE MADE TO REPAY THE MONEY. TWO OF THE FIVE HAD VOLUNTARILY REPAID THE LOANS AT THE TIME OF THE BOARD'S INQUIRY INTO THE MATTER. THE BOARD WAS SATISFIED THERE WAS NO FRAUD ON THE PART OF THE APPLICANT BUT INDICATED THAT ALL FIVE CARDS SHOULD BE DISCOUNTED.

10. IN THE SITUATION BEFORE US, WHILE ETHIER WAS NOT A CANVASSER FOR THE CLAC, WE ARE ALSO OF THE OPINION THAT THE CARDS FOR PENHALE AND GARSIDE SHOULD NOT BE COUNTED. IN OUR VIEW, HAVING REGARD TO ALL THE EVIDENCE AND THE MANNER IN WHICH IT WAS GIVEN, THERE WAS NO REAL INTENTION ON THEIR PART TO REPAY THE LOANS NOR ANY SERIOUS INTENTION ON THE PART OF ETHIER THAT THEY BE REPAID. THE REPAYMENT CAME ABOUT ONLY BECAUSE OF THE FURTHER PROCEEDINGS BEFORE THE BOARD. IN THESE CIRCUMSTANCES IT CANNOT BE SAID THAT THERE WAS ANY FINANCIAL SACRIFICE OR ANY PAYMENT OF INITIATION FEES ON THEIR OWN BEHALF BY PENHALE AND GARSIDE.

11. ALTHOUGH THE RESPONDENT DID NOT FILE A LIST OF EMPLOYEES, THE APPLICANT DETAILED THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT IN ITS APPLICATION AND IT WAS ON THIS INFORMATION THAT THE BOARD ACTED IN CERTIFYING THE CLAC. ACCORDING TO THE APPLICANT, THERE WERE 18 EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION. IN SUPPORT OF THE APPLICATION THE CLAC FILED 10 COMBINATION CARDS AND RECEIPTS. IF THE CARDS FOR PENHALE AND GARSIDE ARE DISCOUNTED, THE APPLICANT WOULD BE LEFT WITH EVIDENCE OF MEMBERSHIP FOR ONLY 8 PERSONS, WHICH IS LESS THAN 45 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT.

12. ALTHOUGH THIS IS SUFFICIENT TO DISPOSE OF THE REQUEST FOR RECONSIDERATION, THERE ARE TWO OTHER MATTERS ON WHICH WE WISH TO COMMENT.

In dealing with the evidence of membership submitted for Penhale and Garside, the Board has acted on the assumption that Vanderlaan had no knowledge that loans were being made by Ethier. However, in the case of Garside, it is clear from the evidence that Vanderlaan did not collect the initiation fee from Garside, nor did he see Garside hand any money to Ethier. Nevertheless, Vanderlaan is shown on the receipt as the collector of Garside's initiation fee. Situations of this nature are discussed in Echlin-United of Canada Limited, OLRB M.R. May, 1965, p. 91.

13. The second point on which we wish to comment relates to the filing with the Board of membership cards signed in blank and completed by Mr. Vanderlaan the next day from the "original cards" signed at the same time. It was stated in evidence by Mr. Vanderlaan that the Board had commended the CLAC for this particular practice of submitting "typed" membership cards. We are not questioning Mr. Vanderlaan's statement in this regard other than to observe that this panel has no knowledge of such approbation. We can only assume that some misunderstanding has arisen between Mr. Vanderlaan and the Board on this matter. Be that as it may, and however helpful to the Board it may be to have the information on membership cards typed in, in our opinion it would be wiser for the applicant to file the original cards so that there can be no doubt in the minds of employees or the Board as to what employees have signed. Without in any way imputing any bad faith or improper motives to the applicant, if the practice it has followed were to become a general practice among applicant trade unions, it is not difficult to imagine how it might be misused in a particular case. The difficulties and dangers of signing cards in blank are discussed in the Frank Licari and Sons Case, OLRB M.R. April, 1967, p. 57.

14. In the result, and pursuant to section 79(1) of the Labour Relations Act, the Board revokes its decision of October 6th, 1969 in this matter and also revokes the certificate issued to the applicant on the same day. The Board is satisfied on the basis of all the evidence before it that less than 45 per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on October 2nd, 1969, the terminal date fixed for this application and the date which the Board determines, under section 77(2)(j) of the Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

15. The application is dismissed. The applicant is directed to return to the Board forthwith the certificate in question and the respondent is directed to return its copy of the said certificate.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

17163-69-R: International Union of Operating Engineers, Local 793 (Applicant) v. BOT CONSTRUCTION (CANADA) LIMITED (Respondent).

3. It was agreed at the hearing that the parties are bound by a collective agreement between the respondent and T. E. L. Council of Trade Unions acting as the representative and agent of: Teamsters Local 230, International Union of Operating Engineers Local Union 793 and Labourers International Union of North America, Local Unions 493, 607 and 1036. This collective agreement which became effective on March 1, 1969 and remains in effect until March 1, 1971, covers various classifications of employees while working on highway construction within the Districts of Algoma, Manitoulin Island, Sudbury, Parry Sound, Nipissing, Temiskaming, Cochrane, Thunder Bay, Rainy River, Kenora and Kenora Patricia. At the hearing, the parties were unable to agree upon which employees are affected by this application and which are covered by the above noted collective agreement. Accordingly, an Examiner was appointed to resolve these differences.

. . .

5. Having regard to the agreement of the parties and to the circumstances of this case, the Board further finds that all employees of the respondent within the radius of 35 miles from the City of Sudbury Federal Building engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen, persons above the rank of non-working foreman and employees covered by the subsisting collective agreement between the respondent and T.E.L. Council of Trade Unions effective March 1, 1969, constitute a unit of employees of the respondent appropriate for collective bargaining.

The Board notes the agreement of the parties that the Borgia Development programme is highway construction and is covered by the said collective agreement.

(April 7, 1970).

17413-69-R: Labourers' International Union of North America, Local 183 (Applicant) v. FROST STEEL AND WIRE COMPANY, LIMITED (Respondent) v. International Association of Bridge, Structural and Ornamental Ironworkers, Local 721 (Intervener).

3. The intervener intervened by way of an application for certification by intervener in this application for certification by the applicant and requested a pre-hearing representation vote.

THE BOARD IN A DECISION DATED MARCH 4, 1970 DENIED THE INTERVENER'S REQUEST FOR A PRE-HEARING REPRESENTATION VOTE AND DIRECTED THE REGISTRAR TO PROCESS THE INTERVENTION AS AN APPLICATION FOR CERTIFICATION BY THE INTERVENER WITHOUT A PRE-HEARING REPRESENTATION VOTE. THE INTERVENER FAILED TO FILE EVIDENCE OF MEMBERSHIP PRIOR TO THE ORIGINAL TERMINAL DATE OF MARCH 2, 1970 IN SUPPORT OF ITS INTERVENTION BY WAY OF AN APPLICATION FOR CERTIFICATION. IN ADDITION, THE PRESENT INTERVENER HAD PREVIOUSLY BEEN UNSUCCESSFUL IN AN EARLIER APPLICATION FOR CERTIFICATION INVOLVING EMPLOYEES OF THE RESPONDENT IN A BARGAINING UNIT IDENTICAL TO THE ONE DEFINED IN PARAGRAPH SIX BELOW. IN THE EARLIER APPLICATION, THE PRESENT INTERVENER ON THE TAKING OF A REPRESENTATION VOTE DIRECTED BY THE BOARD NOT MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE PRESENT INTERVENER. THE BOARD ACCORDINGLY DISMISSED THE EARLIER APPLICATION ON OCTOBER 17, 1969 AND IN ITS DECISION OF THAT DATE STATED THAT IT WOULD NOT ENTERTAIN AN APPLICATION FOR CERTIFICATION BY THE PRESENT INTERVENER WITH RESPECT TO ANY OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WITHIN A PERIOD OF SIX MONTHS FROM THAT DATE. (SEE FROST STEEL & WIRE COMPANY LIMITED, BOARD FILE NO. 16560-69-R). THE INTERVENTION IN THE PRESENT APPLICATION WAS FILED ON MARCH 2, 1970. AT THE HEARING ON MARCH 11, 1970, HAVING REGARD TO THE FOREGOING, THE BOARD DISMISSED THE INTERVENER'S APPLICATION FOR CERTIFICATION.

AT THE HEARING ON MARCH 11, 1970, THE INTERVENER FILED EVIDENCE OF MEMBERSHIP WITH RESPECT TO AT LEAST ONE EMPLOYEE IN THE BARGAINING UNIT AFFECTED BY THIS APPLICATION. AFTER HEARING THE REPRESENTATIONS OF THE PARTIES, THE BOARD RULED THAT THE INTERVENER HAD ESTABLISHED AN INTEREST IN THE PROCEEDINGS AND PERMITTED THE INTERVENER TO MAKE REPRESENTATIONS WITH RESPECT TO THE APPLICANT'S APPLICATION FOR CERTIFICATION.

(APRIL 10, 1970).

17656-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. DURIE MOSAIC & MARBLE LTD. (RESPONDENT).

5. THE APPLICANT IS SEEKING ITS REGULAR BARGAINING UNIT IN THE REGULAR AREA ESTABLISHED BY THE BOARD AS THE UNIT APPROPRIATE FOR COLLECTIVE BARGAINING. THE RESPONDENT, HOWEVER, CLAIMS THAT A MORE RESTRICTED UNIT IS APPROPRIATE FOR COLLECTIVE BARGAINING, NAMELY:

> ALL EMPLOYEES OF DURIE MOSAIC & MARBLE LTD. WORKING ON CONSTRUCTION SITES IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND IN THE UNITED COUNTIES OF PRESCOTT AND RUSSELL ENGAGED IN THE OPERATION OF CRANES, SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THE RANK OF NON-WORKING FOREMAN.

IN PARAGRAPH 13 OF ITS REPLY THE RESPONDENT STATES:

> THE RESPONDENT DOES HAVE A PRECAST MANUFACTURING PLANT AND YARD WHOSE EMPLOYEES ARE COVERED BY A COLLECTIVE AGREEMENT WITH LOCAL 527, LABOURERS INTERNATIONAL UNION OF NORTH AMERICA.

IN CONSENTING TO THE APPLICATION BEING DISPOSED OF WITHOUT A HEARING, THE RESPONDENT STATES THAT THE BARGAINING UNIT IT HAS CLAIMED TO BE APPROPRIATE AND REFERRED TO ABOVE WILL COVER THE FULL INTERESTS OF THE APPLICANT UNION.

6. IT IS APPARENT FROM THE APPLICATION FOR CERTIFICATION THAT THE APPLICANT IS SEEKING BARGAINING RIGHTS FOR A BARGAINING UNIT OF FIELD EMPLOYEES ENGAGED IN ON-SITE PLACING OF PRE-CAST CONCRETE AND NOT FOR THE EMPLOYEES OF THE RESPONDENT IN ITS PLANT AND YARD. WITH REGARD TO THE CLASSIFICATIONS SOUGHT BY THE APPLICANT IN ITS REGULAR BARGAINING UNIT, IT HAS BEEN THE PRACTICE OF THE BOARD TO GRANT TO THE APPLICANT THE BARGAINING UNIT IT IS SEEKING WHETHER OR NOT THERE ARE PRESENT EMPLOYEES WHO WOULD FALL INTO ALL THE CLASSIFICATIONS DESCRIBED IN THE BARGAINING UNIT, SEE, FOR EXAMPLE, THE ROBERTSON-IRWIN LIMITED CASE, OLRB, MONTHLY REPORT, DECEMBER 1969, P. 1097. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKINGFOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PLANT AND YARD EMPLOYEES, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

FOR THE PURPOSES OF CLARITY THE BOARD DECLARES THAT THE WORDS "SIMILAR EQUIPMENT" INCLUDES HOISTS.

(APRIL 29, 1970).

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING MAY 1970

BARGAINING AGENTS CERTIFIED DURING MAY

No Vote Conducted

16535-69-R: Brotherhoood of Painters, Decorators and Peperhangers of America (International Union) (Applicant) v. Ontario Housing Corporation (Respondent).

Unit: "all journeymen painters and apprentices in the employ of the respondent in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except supervisors and persons above the rank of supervisor."

(SEE INDEXED ENDORSEMENT PAGE 189).

17156-69-R: International Union of Operating Engineers, Local 796 (Applicant) v. Hôpital Montfort (Respondent).

Unit: "all employees of the respondent at Ottawa, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, office and clerical staff, supervisors, foremen, persons above the rank of foreman, persons regularly employed for not more than twenty-four hours per week, students employed during the school vacation periods, plant superintendent, assistant plant superintendent and persons covered by a subsisting collective agreement between the respondent and the International Union of Operating Engineers, Local 796." (174 employees in the unit).

(FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS,OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.)

17240-69-R: Amalgamated Clothing Workers of America, CLC AFL-CIO (Applicant) v. Paris Neckwear Company Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent located in Toronto, save and except foremen, foreladies, persons above the rank of foreman and forelady, supervisors, sales and office staff, homeworkers, and persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (36 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 203).

17424-69-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. M. Loeb Limited (Respondent).

Unit: "all employees of the respondent at its cash and carry operation at Sault Ste. Marie, save and except manager, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (3 employees in the unit).

17537-69-R: Retail Clerks International Association (Applicant) v. Shop-Easy, Division of Westfair Foods Ltd. (Respondent).

Unit: "all employees of the respondent in its retail stores at Marathon, save and except store manager, assistant manager and meat market manager, and persons above the rank of store manager." (8 employees in the unit).

17589-70-R: Christian Labour Association of Canada (Applicant) v. Canada Building Materials Limited (Respondent).

Unit: "all employees of the respondent employed at Ajax, save and except foremen and persons above the rank of foreman and office staff." (6 employees in the unit).

17590-70-R: Canadian Food & Allied Workers, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, affiliated with the AFL-CIO-CLC Local P1230 (Applicant) v. General Foods Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees engaged by the respondent in the Quality Control Laboratory in its plant at Cobourg, save and except Quality Control Supervisor, persons above the rank of Quality Control Supervisor, graduate chemists, students employed during the school vacation period and students employed on a University co-operative training programme." (27 employees in the unit).

(Having regard to the agreement of the parties).

17613-70-R: Building Service Employees' International Union Local 268 Affiliated with the S.E.I.U. A F of L, C.I.O. & C.L.C. (Applicant) v. Versafood Services Limited, Food Services Management Division, Lakehead University (Respondent).

Unit: "all employees of the respondent at Thunder Bay, save and except supervisors, head chef, those above the rank of supervisor and head chef, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (60 employees in the unit).

17614-70-R: Local Union 1824, of the International Brotherhood of Painters and Allied Trades (Applicant) v. Industrial Dry-wall Limited (Respondent).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

(FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT "PAINTERS" INCLUDES TAPERS AND SANDERS).

17619-70-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 141, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CONTRACT CARTAGE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF WOODSTOCK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

17624-70-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493 (APPLICANT) V. BARRON DIAMOND DRILLING LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF SOUTH LORRAINE AND THE MUNICIPALITIES IMMEDIATELY ADJACENT THERETO, ALL IN THE DISTRICT OF TIMISKAMING, WHILE ENGAGED IN CONSTRUCTION PROJECTS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

(FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM "CONSTRUCTION LABOURERS" INCLUDES "DRILLERS".

17627-70-R: THE LUMBER AND SAWMILL WORKERS UNION LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CHUKUNI LUMBER COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS DRYDEN LOCAL 105 AFL-CIO-CLC (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE DISTRICT OF KENORA IN THE AREA DEFINED IN TIMBER LICENSE NUMBER 1493, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SCALING STAFF AND PERSONS COVERED BY CERTIFICATE OF THE BOARD DATED APRIL 9TH, 1970 ISSUED TO THE INTERVENER HEREIN." (16 EMPLOYEES IN THE UNIT).

17633-70-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. NORTHERN AND CENTRAL GAS CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAGAR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

17634-70-R: General Truck Drivers Union Local 879 (Applicant) v. Nick's Haulage Limited (Respondent).

Unit: "all employees of the respondent at St. Catharines, save and except foremen, those above the rank of foreman, office and sales staff." (7 employees in the unit).

17640-70-R: Retail & Food Employees Local Union 175, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. The Great Atlantic and Pacific Tea Company, Limited (Respondent).

Unit: "all employees of the respondent at its retail stores at St. Thomas, regularly employed for not more than 24 hours per week and students employed in off school hours and during the school vacation period." (47 employees in the unit).

17643-70-R: Labourers International Union of North America, Local 493 (Applicant) v. M - W. Fence Contractor (Respondent).

Unit: "all employees of the respondent within a fifty mile radius of the Timmins Federal Building engaged in the installation and/or erection of fences, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

17644-70-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local Union 91, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Buffetts Garage (Respondent).

Unit: "all employees of the respondent at Brockville, save and except foremen, persons above the rank of foreman, office and sales staff." (3 employees in the unit).

17645-70-R: Labourers International Union of North America, Local 607 (Applicant) v. Commonwealth Construction Co., Ltd. (Respondent) v. Lumber & Sawmill Workers Union, Local 2693 of the United Brotherhood of Carpenters & Joiners of America (Intervener) v. Group of Employees (Objectors).

Unit: "all construction labourers in the employ of the respondent in the District of Rainy River, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

(See indexed endorsement page 206).

17652-70-R: Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. The Great Atlantic and Pacific Tea Company, Limited (Respondent).

Unit: "all meat department employees of the respondent at its retail stores at Oshawa, save and except persons regularly employed for not more than 24 hours per week and students employed in off-school hours and during the school vacation period." (11 employees in the unit)

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17660-70-R: Council of Concrete Forming Trade Unions (Applicant) v. Skyview Forming Limited (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener).

Unit: "all carpenters and carpenters' apprentices, cement masons and cement masons' apprentices, construction labourers and reinforcing rodmen in the employ of the respondent in the County of Wentworth and the Township of Nassagaweya and the Town of Burlington in the County of Halton, save and except non-working foremen and persons above the rank of non-working foreman." (57 employees in the unit).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

17663-70-R: International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 721 (Applicant) v. Buildings Division of Dominion Bridge Company Limited (Respondent).

Unit: "all reinforcing rodmen in the employ of the respondent in the County of Simcoe, the District of Muskoka and the Townships of Rama, Mara and Thorah in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

17664-70-R: General Truck Drivers' Union Local 938 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Domtar Limited (Respondent).

Unit: "all employees of the respondent employed at 5925 - 5927 Indian Line, Mississauga, save and except foremen, persons above the rank of foreman, office and sales staff." (4 employees in the unit).

17665-70-R: International Union of Electrical, Radio & Machine Workers (Applicant) v. Reliance Electric Limited (Respondent).

Unit: "all employees of the respondent at Port Elgin, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (38 employees in the unit).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17666-70-R: Laborers International Union of North America, Local 607 (Applicant) v. Kap Cement Limited (Respondent).

Unit: "all employees of the respondent employed at its concrete block and precast manufacturing plant at Kapuskasing, save and except foremen, persons above the rank of foreman, office and sales staff." (5 employees in the unit).

17675-70-R: Teamsters' Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers (Applicant) v. Bertrand & Frere Construction Co. Ltd. (Respondent).

Unit: "all employees of the respondent employed at and working out of the Regional Municipality of Ottawa-Carleton, save and except foremen, persons above the rank of foreman, office and sales staff." (15 employees in the unit).

17677-70-R: Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 124 (Applicant) v. New Style Drywall Inc. (Respondent).

Unit: "all plasterers and plasterers' apprentices in the employ of the respondent in The Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

17680-70-R: International Union of Operating Engineers, Local 793 (Applicant) v. The Ralph M. Parsons Construction Company of Canada Limited (Respondent).

Unit: "all employees of the respondent working as party chief, instrumentmen, rodmen and chainmen, within a fifty mile radius of the Timmins Federal Building, save and except professional engineers, field engineers, and chief of parties." (24 employees in the unit).

(having regard to the agreement of the parties).

17683-70-R: Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. The Great Atlantic and Pacific Tea Company, Limited (Respondent).

Unit: "all meat department employees of the respondent at its retail stores at Pembroke, save and except persons regularly employed for not more than 24 hours per week and students employed in off-school hours and during the school vacation period." (3 employees in the unit).

(for the purposes of clarity, the Board noted the agreement of the parties that meat department heads are included in the bargaining unit).

17684-70-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Aurora Tool & Manufacturing Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Oakville, save and except foremen, persons above the rank of foreman, office and sales staff." (12 employees in the unit).

17692-70-R: United Brotherhood of Carpenters and Joiners of America Local #1988 (Applicant) v. CNIC Construction Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Lanark, the Townships of North Crosby, South Crosby, South Burgess, Bastard, South Elmsley and Kitley in the County of Leeds and the Townships of Wolford, Oxford and South Gower in the County of Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in the unit).

17693-70-R: Hotel & Restaurant Employees and Bartenders International Union, Restaurant, Cafeteria and Tavern Employees Union, Local 254 (Applicant) v. Crawley & McCracken Company Limited (Respondent).

Unit: "all employees of the Company at Project #1550, Staff Village, Waters Township, Coppercliff, save and except Camp Manager, Assistant Camp Manager, Commissary Manager, Snack Bar Manager, Grocery Store Manager and Chef and Office staff." (4 employees in the unit).

(having regard to the agreement of the parties).

17696-70-R: International Union of Operating Engineers, Local 793 (Applicant) v. Mascioli Construction Company Limited (Respondent).

Unit: "all employees of the respondent, working within a fifty mile radius of the Timmins Federal Building, engaged in the operation of cranes, shovels, bulldozers, and similar equipment and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

(the Board noted the agreement of the parties that persons employed in the respondent's repair shop, yard block plant and gravel pits pertaining to the block plant business are not included in the bargaining unit).

17698-70-R: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. Tillsonburg District Memorial Hospital (Respondent).

Unit: "all employees of the respondent at its hospital at Tillsonburg, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel supervisors, persons above the rank of supervisor, office staff, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period and persons covered by a collective agreement between the International Union of Operating Engineers and the respondent." (106 employees in the unit).

(FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS).

17702-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1758 (APPLICANT) v. POLARIS STEEL LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF ELIZABETHTOWN IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF AUGUSTA AND EDWARDSBURGH IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

17703-70-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. WOLFOND CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

17704-70-R: TEAMSTERS LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. JANIN BUILDING & CIVIL WORKS LTD. GENERAL CONTRACTORS (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING."

17705-70-R: SERVICE EMPLOYEES INTERNATIONAL UNION A.F. OF L., C.I.O., C.L.C. (APPLICANT) v. BELLEVILLE GENERAL HOSPITAL (RESPONDENT) v. NURSES' ASSOCIATION BELLEVILLE GENERAL HOSPITAL (INTERVENER).

UNIT: "ALL REGISTERED TECHNOLOGISTS; LABORATORY, RADIOLOGY AND CARDIOLOGY TECHNICIANS; AND LABORATORY ASSISTANTS EMPLOYED BY THE RESPONDENT AT ITS HOSPITAL IN BELLEVILLE, SAVE AND EXCEPT GRADUATE PHARMACISTS; SUPERVISORS; CHIEF TECHNICIAN X-RAY; CHIEF INSTRUCTORS OF LABORATORY AND RADIOLOGY; CHARGE TECHNOLOGISTS; SENIOR TECHNOLOGISTS; STUDENTS-IN-TRAINING; PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE NURSES' ASSOCIATION BELLEVILLE GENERAL HOSPITAL AND THE RESPONDENT AND SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 183 AND THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS AND THE RESPONDENT." (38 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17706-70-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. GENERAL TUBES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (32 EMPLOYEES IN THE UNIT).

17708-70-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 91, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. ST. REMY MOTOR SERVICE LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (37 EMPLOYEES IN THE UNIT).

17715-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, MILLWRIGHTS' LOCAL 1592 (APPLICANT) v. MUSTANG CONTRACTORS LIMITED (RESPONDENT) v. IRON WORKERS DISTRICT COUNCIL OF EASTERN CANADA INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (INTERVENER).

UNIT: "ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

17716-70-R: INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS (APPLICANT) v. COOPER CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT 260 LAUGHTON AVENUE, TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (206 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17717-70-R: THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL UNION #1832 (APPLICANT) v. SUPERIOR PAINTING LIMITED (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

17718-70-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 70 (APPLICANT) v. FOUNDATION COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

17719-70-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Cyrus J. Moulton Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Lanark, the Townships of North Crosby, South Crosby, South Burgess, Bastard, South Elmsley and Kitley in the County of Leeds and the Townships of Wolford, Oxford and South Gower in the County of Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

17720-69-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Concept Furniture International Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in The Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

17721-70-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Commonwealth Construction Company Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Rainy River, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

17722-70-R: International Ladies Garment Workers Union (Applicant) v. Sweet Petite Limited (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, foreladies, persons above the ranks of foreman and forelady, designer, office and sales staff." (12 employees in the unit).

(Having regard to the agreement of the parties).

17723-70-R: Retail Clerks International Association (Applicant) v. East Mall I.G.A. (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto regularly employed for not more than 24 hours per week and students employed during the school vacation period." (9 employees in the unit).

17727-70-R: Chatham Construction Workers Association, Local No. 53, affiliated with the Christian Labour Association of Canada (Applicant) v. Intrepid General Limited (Respondent).

Unit: "all construction labourers, carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Essex and Kent, save and except non-working foremen and persons above the rank of non-working foremen." (3 employees in the unit).

17728-70-R: Chatham Construction Workers Association, Local No. 53, affiliated with the Christian Labour Association of Canada (Applicant) v. Ellis General Contractors (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Essex and Kent, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

17729-70-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the Township of Caradoc (Respondent).

Unit: "all employees of the respondent in its Roads Department, save and except road superintendent, persons above the rank of road superintendent, and office staff." (4 employees in the unit).

(having regard to the agreement of the parties).

17731-70-R: Sheet Metal Workers' International Association, AFL-CIO-CLC, Local Union 269 (Applicant) v. Bradford Heating Ltd. (Respondent).

Unit: "all employees of the respondent at Kingston employed as oil burner servicemen, save and except foremen and persons above the rank of foreman." (10 employees in the unit).

17733-70-R: Sheet Metal Workers' International Association, AFL-CIO-CLC, Local Union 269 (Applicant) v. Leslie W. Cochrane carrying on business under the name of Cochrane's Oil Service (Respondent).

Unit: "all employees of the respondent at Kingston employed as oil burner mechanics, save and except supervisors and persons above the rank of supervisor." (2 employees in the unit).

17735-70-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America, UAW (Applicant) v. La Salle Machine Tool of Canada, Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Windsor, save and except foremen, persons above the rank of foreman, office and sales staff." (75 employees in the unit).

17740-70-R: International Union of District 50, Allied and Technical Workers of the United States and Canada (Applicant) v. Modern Steel & Iron Works (Niagara) Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Niagara Falls, save and except foremen, persons above the rank of foreman, office and sales staff." (10 employees in the unit).

17742-70-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Canadian Trailmobile Limited (Respondent).

Unit: "all employees of the respondent at Ottawa, save and except foremen, persons above the rank of foreman, office and sales staff." (10 employees in the unit).

(Having regard to the agreement of the parties).

17750-70-R: Canadian Union of Public Employees (Applicant) v. Agilis Corporation Limited, carrying on business under the firm name and style of Suburban Sanitation (Respondent).

Unit: "all employees of the respondent at Windsor, save and except foremen, persons above the rank of foreman, and office staff." (8 employees in the unit).

17753-70-R: International Union of Operating Engineers, Local 793 (Applicant) v. Standard Paving Company (a division of S.P. & M. Materials Limited) (Respondent).

Unit: "all employees of the respondent within a twenty mile radius of the North Bay post office engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

17756-70-R: United Brotherhood of Carpenters and Joiners of America, Local Union #2307 (Applicant) v. Real Binette Construction Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the United Counties of Stormont, Dundas and Glengarry, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

17765-70-R: Canadian Union of Construction Workers (Applicant) v. Dominion Worthwhile Realties (Respondent).

Unit: "all construction labourers, carpenters and carpenters' apprentices, reinforcing rodmen, cement masons and cement masons' apprentices in the employ of the respondent in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (39 employees in the unit).

17766-70-R: Canadian Union of Construction Workers (Applicant) v. Formalite Construction Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices and all construction labourers in the employ of the respondent in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

17781-70-R: International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 721 (Applicant) v. Vanbots Construction Company (Respondent).

Unit: "all reinforcing rodmen in the employ of the respondent in the Counties of Peterborough, Victoria and the Provisional County of Haliburton, save and except non-working foremen and persons above the rank of non-working foreman". (2 employees in the unit).

17800-70-R: Canadian Union of Construction Workers (Applicant) v. Formrite Forming Ltd. (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener).

Unit: "all cement masons, cement masons' apprentices, construction labourers, carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in the unit).

17817-70-R: International Association of Bridge, Structural and Ornamental Ironworkers Local Union 721 (Applicant) v. Falcon Structural Forming Central Ltd. (Respondent).

Unit: "all reinforcing rodmen in the employ of the respondent in the County of Ontario (except the Townships of Pickering, Rama, Mara and Thorah) and the County of Durham (except the Township of Hope), save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

17822-70-R: International Union of Operating Engineers, Local 793 (Applicant) v. Arthur G. McKee & Company of Canada, Ltd. (Respondent).

Unit: "all employees of the respondent in the County of Wentworth and the Township of Nassagaweya and the Town of Burlington in the County of Halton engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

17836-70-R: International Union of Operating Engineers, Local 793 (Applicant) v. Commonwealth Construction Company Limited (Respondent).

Unit: "all employees of the respondent in the District of Rainy River engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

17840-70-R: Labourers International Union of North America, Local 597 (Applicant) v. Emery Engineering & Contracting Company Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Counties of Peterborough, Victoria and the Provisional County of Haliburton, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

17841-70-R: International Union of Operating Engineers, Local 793 (Applicant) v. Conaquip Limited (Respondent).

Unit: "all employees of the respondent in the City of Sault Ste. Marie, the Township of Prince and the Townships immediately adjacent thereto engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

Certified Subsequent to Pre-Hearing Vote

17336-69-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. George W. Crothers (1965) Limited (Respondent) v. Canadian Construction Equipment Workers' Union No. 174 National Council of Canadian Labour (Intervener).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman, and office and sales staff." (134 employees in the unit).

Number of names of persons on revised voters' list		127
Number of persons who cast ballots		123
Number of ballots marked in favour of applicant	86	
Number of ballots marked in favour of intervener	37	

Certified Subsequent to Post-Hearing Vote

17112-69-R: Canadian Union of Construction Workers (Applicant) v. Sterling Tile Company (Respondent) v. The Resilient Floor Workers Local Union No. 2965 of The United Brotherhood of Carpenters and Joiners of America (Intervener).

Unit: "all truck drivers and ceramic tile setters in the employ of the respondent in Metropolitan Toronto, The Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (53 employees in the unit).

Number of names of persons on revised voters' list		24
Number of persons who cast ballots	24	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	21	
Number of ballots marked against applicant	2	

17205-69-R: United Steelworkers of America (Applicant) v. Whitaker Cable of Guelph Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Guelph, save and except supervisors, persons above the rank of supervisor, office and sales staff, students employed during the school vacation period and employees covered by a subsisting certificate of the Board dated the 8th day of January, 1969." (57 employees in the unit).

Number of names of persons on revised voters' list		57
Number of persons who cast ballots	55	
Number of ballots marked in favour of applicant	34	
Number of ballots marked against applicant	21	

17294-69-R: Canadian Union of Construction Workers (Applicant) v. B. Moscone Tile Co. Ltd. (Respondent) v. Local No. 31 Marble Masons, Tile Setters and Terrazzo Mechanics affiliated with the Bricklayers, Masons and Plasterers International Union of America (Intervener).

Unit: "all tile setters in the employ of the respondent in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario,

SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST			7
NUMBER OF PERSONS WHO CAST BALLOTS		7	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4		
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3		

17295-69-R: CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) v. CONTINENTAL TERRAZZO & MARBLE COMPANY LIMITED (RESPONDENT) v. LOCAL NO. 31 MARBLE MASONS, TILE SETTERS AND TERRAZZO MECHANICS AFFILIATED WITH THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA (INTERVENER).

UNIT: "ALL TILE SETTERS AND TERRAZZO MECHANICS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST			5
NUMBER OF PERSONS WHO CAST BALLOTS		5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4		
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1		

17309-69-R: CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) v. S. M. TILE CO. (RESPONDENT).

UNIT: "ALL TILE SETTERS, TERRAZZO MECHANICS AND LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST			2
NUMBER OF PERSONS WHO CAST BALLOTS		2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2		
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0		

17564-69-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) v. BOONSTRA & REIDING SHEETMETAL LTD. (RESPONDENT) v. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 537 (INTERVENER).

UNIT: "ALL SHEET METAL WORKERS AND SHEET METAL APPRENTICES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF THE TOWNSHIP OF WEST FLAMBOROUGH IN THE COUNTY OF WENTWORTH, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATION OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0

APPLICATIONS FOR CERTIFICATION DISMISSED DURING MAY

NO VOTE CONDUCTED

16043-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 880, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. NORTH AMERICAN PLASTICS CO. LIMITED (RESPONDENT) v. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (INTERVENER).

17135-69-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) v. CHATEAU-GAI WINES LIMITED (RESPONDENT) v. LOCAL 103 OF THE CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER). (28 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 198).

17193-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 91, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. DON JONES LIMITED (RESPONDENT). (29 EMPLOYEES).

17288-69-R: CANADIAN TRANSPORTATION WORKERS UNION 197 (APPLICANT) v. WILSON'S TRUCK LINES LIMITED (RESPONDENT) v. GENERAL TRUCK DRIVERS' UNION, LOCAL 938 (INTERVENER). (173 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 204).

17531-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL

Union, No. 91 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Western Tire and Auto Supply (Respondent). (4 employees).

17600-70-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 647 (Applicant) v. Pembroke Foodliner Limited (Respondent) v. Group of Employees (Objectors). (41 employees).

17654-70-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1747, affiliated with The Carpenters' Council of Toronto and Vicinity (Applicant) v. Durable Drywall Ltd. (Respondent) v. The Wood, Wire and Metal Lathers' International Union, Local 562, (Intervener). (33 employees).

17671-70-R: The Lumber & Sawmill Workers Union, Local 2693 of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. Commonwealth Construction Co. Ltd. (Respondent). (2 employees).

17674-70-R: United Cement, Lime & Gypsum Workers International Union, A.F.L..C.I.O..C.L.C. (Applicant) v. Frank S. Coyle Limited (Respondent).

Unit: "all employees of the respondent employed at and working out of Lakefield, save and except foreman, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (32 employees in the unit).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

17734-70-R: Sheet Metal Workers' International Association, AFL-CIO-CLC; Local Union 269 (Applicant) v. S. Anglin Co. Limited (Respondent) v. United Electrical, Radio and Machine Workers of America, and its Local 522 (Intervener). (8 employees).

(SEE INDEXED ENDORSEMENT PAGE 210).

17775-70-R: United Brotherhood of Carpenters and Joiners of America Local Union 93 (Applicant) v. Industrial Formwork Ltd. (Respondent). (11 employees).

17820-70-R: Labourers International Union of North America, Local 597 (Applicant) v. Ontario Formwork Limited (Respondent). (9 employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

17380-69-R: T. E. L. Council of Unions (Applicant) v. Pioneer Construction Co. (1967) Limited (Respondent) v. Northern Construction Union (Intervener).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT WORKING WITH THE CITY OF SUDBURY AND WITHIN A RADIUS OF THIRTY-FIVE MILES OF THE SAID CITY OF SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, WATCHMEN, TECHNICAL AND OFFICE STAFF AND STUDENTS HIRED FOR THE SUMMER VACATION PERIOD." (87 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		68
NUMBER OF PERSONS WHO CAST BALLOTS	68	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	13	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	55	

17542-69-R: AMALGAMATED SILVER WORKERS UNION, LOCAL 44, I.J.W.U. (APPLICANT) V. THE INTERNATIONAL SILVER COMPANY OF CANADA, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PERTH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (138 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		129
NUMBER OF PERSONS WHO CAST BALLOTS	128	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	21	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	107	

17561-69-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. TAYLOR INSTRUMENT COMPANIES OF CANADA LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (61 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		60
NUMBER OF PERSONS WHO CAST BALLOTS	15	

BALLOT BOX SEALED

17611-70-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Canadian Westinghouse Company Limited (Respondent).

Voting Constituency: "All employees of the respondent at Orangeville, save and except foremen, supervisors, persons above the ranks of foreman and supervisor, plant nurse, office, clerical and technical staff, students employed during the school vacation period and students employed on a co-operative basis with a college or university." (113 employees).

Number of names of persons on revised voters' list	108
Number of persons who cast ballots	102
Number of ballots marked in favour of applicant	32
Number of ballots marked against applicant	70

Certification Dismissed Subsequent to Post-Hearing Vote

16804-69-R: Local Union 1739 of the International Brotherhood of Electrical Workers (Applicant) v. Ed Walker's Electric Ltd. (Respondent) v. Employees (Objectors).

Unit: "All electricians and electricians' apprentices in the employ of the respondent in the County of Simcoe, the District of Muskoka and the Townships of Rama, Mara and Thorah in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (10 employees in the unit).

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	8
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	5

17191-69-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local Union 91, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Stevenson Ford Sales Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "All employees of the respondent engaged in motor vehicle repair services at Belleville, save and except foremen, persons above the rank of foreman, services sales clerks, parts sales clerks, office and sales staff, students employed during the school vacation period

AND PERSONS REGULARLY EMPLOYED FOR LESS THAN 24 HOURS PER WEEK." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		9
NUMBER OF PERSONS WHO CAST BALLOTS	9	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9	

17203-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 91, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. THE BELLEVILLE AUTO ELECTRIC LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		12
NUMBER OF PERSONS WHO CAST BALLOTS	12	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	10	

17302-69-R: CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) v. NORTH YORK TILE CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL TILE SETTERS AND LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		10
NUMBER OF PERSONS WHO CAST BALLOTS	10	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9	

17304-69-R: CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) v. POLMAR TILE COMPANY (RESPONDENT).

UNIT: "ALL TILE SETTER MECHANICS AND LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

(FOR PURPOSES OF CLARITY, THE BOARD DECLARED THAT TILE SETTER HELPERS FALL WITHIN THE CLASSIFICATION OF LABOURER).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	1	

(BALLOT BOX SEALED).

(SEE INDEXED ENDORSEMENT PAGE 206).

17307-69-R: CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) v. SPEEDY TILE & CARPET CONTRACTORS (RESPONDENT).

UNIT: "ALL TILE SETTER MECHANICS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		4
NUMBER OF PERSONS WHO CAST BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3	

17426-69-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. JAY B. LANGNER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT BUILDING SUPERINTENDENT AND THOSE ABOVE THE RANK OF BUILDING SUPERINTENDENT." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		6
NUMBER OF PERSONS WHO CAST BALLOTS	6	

(BALLOT BOX SEALED).

17527-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 91, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. GARY WILSON TIRE SERVICE LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RENFREW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		7
NUMBER OF PERSONS WHO CAST BALLOTS	7	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6	

17532-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 91, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. MILLER-HUGHES FORD SALES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		22
NUMBER OF PERSONS WHO CAST BALLOTS	22	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	16	

17533-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 91, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. BARKER MOTORS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RENFREW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		11
NUMBER OF PERSONS WHO CAST BALLOTS	11	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MAY

17012-69-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. O. & W. Electronics Limited (Respondent) v. International Association of Machinists and Aerospace Workers (Intervener).

17651-70-R: General Truck Drivers' Union Local 938 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Wilson's Truck Lines Limited (Respondent). (170 employees).

17699-70-R: Fur, Leather, Shoe & Allied Workers' Union of the Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO, CLC (Applicant) v. Lorraine Shoe Co. Limited (Respondent). (51 employees).

17736-70-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local Union 880 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Catalano Produce Ltd. (Respondent). (12 employees).

17743-70-R: International Union of Operating Engineers, Local 793 (Applicant) v. Geocon Ltd. (Respondent). (13 employees).

17795-70-R: United Steelworkers of America (Applicant) v. Superior Propane Limited (Respondent). (8 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING MAY

17207-69-R: Nation-Wide Interior Maintenance Company Limited (Applicant) v. Labourers' International Union of North America Lo. 527 (Respondent). (DISMISSED).

17430-69-R: Michal Yurkiw and others employees of Dempster's Bread Limited Division of Corporate Food (formerly Dempster's Bread Limited) (Applicant) v. The Retail, Wholesale Bakery and Confectionery Workers Union on behalf of Local 461 of the Retail, Wholesale and Department Store, A.F. of L. - C. I.O. - C.L.C. (Respondent) v. Dempster's Bread Limited (Employer).

Unit: "all employees of Dempster's Bread Limited at 2 Fraser Avenue, Toronto, save and except foremen, foreladies, persons above the rank of foreman and forelady, office staff, and persons regularly employed for not more than 24 hours per week."(200 employees in the unit).

Number of names of persons on revised voters' list		162
Number of persons who cast ballots	145	
Number of spoiled ballots	4	

Number of ballots marked in favour of respondent	18
Number of ballots marked against respondent	123

17479-69-R: Draftsmen in the Employ of Philips Electronics Indust. Ltd. (Applicants) v. Draftsmen's Association of Ontario Local 164 A.F.T.E. - C.L.C. (Respondent) v. Philips Electronics Industries Ltd. (Intervener).

Unit: "all draftsmen and their apprentices in the employ of Phillips Electronics Industries Ltd. below the rank of assistant supervisor." (15 employees in the unit). (Granted).

Number of names of persons on voter's list		15
Number of persons who cast ballots	13	
Number of ballots marked in favour of respondent	1	
Number of ballots marked against respondent	12	

17483-69-R: Harry Holmes (Applicant) v. Canadian Union of Public Employees (Respondent) v. Quinte Sanitation Services Limited (Intervener). (Granted).

Unit: "all employees of Quinte Sanitation Services Limited at Belleville, save and except the directors and manager and persons above the rank of directors and manager, and office staff." (43 employees in the unit).

Number of names of persons on voter's list		7
Number of persons who cast ballots	7	
Number of ballots marked in favour of respondent	0	
Number of ballots marked against respondent	7	

17609-70-R: Gregory Lyle Hinan (Applicant) v. The Toronto Newspaper Guild (Local 87), chartered by the American Newspaper Guild (CLC, AFL-CIO) hereinafter known as "the Guild" for itself and on behalf of all the employees of the Employer described in Article 1 (Respondent). (43 employees). (Dismissed).

(Re: The Burlington Printing Company Limited).

17620-70-R: Kay Rogers and others (Applicant) v. Laundry and Linen Drivers and Industrial Workers Local Union 847 (Respondent). (43 employees). (Dismissed).

(Re: Drug Trading Company Limited, Scarborough Branch).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING MAY

17475-69-R: International Chemical Workers Union, Local 798 (Applicant) v. International Chemical Workers Union, Local 741 (Respondent) v. Union Gas Company of Canada, Limited (Employer). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 218).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING MAY

17737-70-U: Dravo Construction Limited (Applicant) v. Rheal J. Lemieux, Frances F. Lajeunesse, Fritz E. Czarnowski, Ralph N. Sampson, Leon F. Chretien, Rheal Rochon, Arthur Morsette, Dennis J. Marcotte, Robert J. Major, Maurice R. Marcotte (Respondents). (WITHDRAWN).

17771-70-U: Gilbert Steel Limited (Applicant) v. The International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 736 (Respondent). (WITHDRAWN).

17825-70-U: L'Abbe Construction Limited (Applicant) v. United Brotherhood of Carpenters and Joiners of America, United Brotherhood of Carpenters and Joiners of America, Local Union 1669, William Stefanovitch and M. Noga (Respondents). (WITHDRAWN).

17848-70-U: The Canadian Lithographers Association Inc., Council of Printing Industries of Canada and Brigdens Limited (Applicants) v. Those persons named in Schedule "A" attached hereto (Respondents). (WITHDRAWN).

17849-70-U: The Canadian Lithographers Association Inc., Council of Printing Industries of Canada and Bomac Graphics Limited (Toronto) (Applicants) v. Those persons named in Schedule "A" attached hereto (Respondents). (WITHDRAWN).

17850-70-U: The Canadian Lithographers Association Inc., Council of Printing Industries of Canada and Davidson-Burnett Limited (Applicants) v. Those persons named in Schedule "A" attached hereto (Respondents). (WITHDRAWN).

17871-70-U: Kokotow Lumber Limited (Applicant) v. Roger Charbonneau, Fern Renaud, Felix Giroux, Claude Gilbert, Bruno Gilbert, Lionel Fournier, Ron Higgins, Paul Fournier and Robert Fournier,(Respondents). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MAY

17200-69-U: Watts and Henderson Limited (Applicant) v. Clarence Howard and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Local Union 46 (Respondent). (DISMISSED).

17327-69-U: General Truck Drivers Union Local 938 (Applicant) v. Wilson's Truck Lines Limited (Respondent). (WITHDRAWN).

17396-69-U: General Truck Drivers' Union Local 938 (Applicant) v. Donald Wilson (Respondent). (WITHDRAWN).

17506-69-U: CIP Containers Limited (Applicant) v. Armstrong, Myrtle et al (Respondents). (GRANTED).

17581-70-U: Cooper Construction Company (Eastern) Ltd. (Applicant) v. Thomas Fenwick and Local Union 18, United Brotherhood of Carpenters and Joiners of America (Respondents). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 223).

17582-70-U: Cooper Construction Company (Eastern) Ltd. (Applicant) v. Jim Zaborsky, Joe Silvestro, Joe Raso (Respondent). (WITHDRAWN).

17657-70-U: Dravo of Canada Limited (Applicant) v. Tunnel & Rock Workers Union, Local 183, Gerry Gallagher and Hugh MacDonald (Respondents). (WITHDRAWN).

17658-70-U: Bakery and Confectionery Workers International Union of America, Local 264 (Applicant) v. Flamingo Pastries Limited and Ken Jackson (Respondents). (WITHDRAWN).

17770-70-U: Gilbert Steel Limited (Applicant) v. The International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 736 and Valmond Beaudin and Kenneth Childs (Respondents). (WITHDRAWN).

17789-70-U: Civic Employees Local 43, Canadian Union of Public Employees (Applicant) v. The Corporation of the City of Toronto (Respondent). (WITHDRAWN).

17790-70-U: Civic Employees Local 43, Canadian Union of Public Employees (Applicant) v. William Dennison, Robert White, Philip White, Basil Hall and Civic Employees Local 43, Canadian Union of Public Employees (Respondents). (WITHDRAWN).

17791-70-U: Civic Employees Local 94, Canadian Union of Public Employees (Applicant) v. William Dennison, Robert White, Philip White, Basile Hall and True Davidson (Respondents). (WITHDRAWN).

17824-70-U: L'Abbe Construction Limited (Applicant) v. United Brotherhood of Carpenters and Joiners of America, United Brotherhood of Carpenters and Joiners of America, Local Union 1669, William Stefanovitch and M. Noga (Respondents). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING MAY

17315-69-U: Service Employees' International Union Local 204 (Complainant) v. Huron County Board of Education and Elmer B. Walker (Respondent). (WITHDRAWN).

17335-69-U: International Chemical Workers Union (Complainant) v. Shakespeare Company (Canada) Ltd. (Respondent). (WITHDRAWN).

17434-69-U: International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL,CIO,CLC (Complainant) v. Seven-Up (Ontario) Limited (Respondent). (WITHDRAWN).

17438-69-U: Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union 91 (Complainant) v. De Haan Cartage Co. Ltd. (Respondent).

17463-69-U: Charles L. McVeigh (Complainant) v. Hodgins Lumber Ltd., Pembroke, Ontario (Respondent). (WITHDRAWN).

17580-70-U: United Steelworkers of America (Complainant) v. Whitaker Cable Guelph, Ltd. (Respondent). (WITHDRAWN).

17586-70-U: United Steelworkers of America (Complainant) v. Plaza Electroplating Ltd. (Respondent). (WITHDRAWN).

17587-70-U: United Steelworkers of America (Complainant) v. Plaza Fibreglass Mfg. Ltd. (Respondent). (WITHDRAWN).

17606-70-U: The Canadian Union of Operating Engineers (Complainant) v. Hotel Dieu Hospital, St. Catharines (Respondent). (WITHDRAWN).

17647-70-U: Civil Service Association of Ontario (Inc.) (Complainant) v. District of Manitoulin Home for the Aged (Respondent). (DISMISSED).

17648-70-U: United Electrical, Radio and Machine Workers of America (Complainant) v. Canadian Westinghouse Company Limited (Respondent). (WITHDRAWN).

17709-70-U: Walter Joseph Sowinski (Complainant) v. Bernard P. Cramer (Respondent). (WITHDRAWN).

17738-70-U: Service Employees International Union, Local 210 (Complainant) v. Corporation of the County of Bruce (Gateway Haven Home for the Aged) and Louis Bousquet (Respondents). (WITHDRAWN).

17752-70-U: United Steelworkers of America (Complainant) v. General Tubes Limited (Respondent). (WITHDRAWN).

17869-70-U: Roy W. Thompson (Complainant) v. McFarlane Gendron Mfd., Co. Ltd. (Respondent). (DISMISSED).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

17782-70-M: Service Employees' Union Local 204 (Trade Union) v. The St. Catharines General Hospital (Company). (GRANTED).

APPLICATION UNDER SECTION 47a DISPOSED OF DURING MAY

16548-69-M: Retail Clerks Union Locals No. 206 and 486 chartered by the Retail Clerks International Association (Applicants) v. Super City Discount Foods Limited; Loblaw Groceterias Co. Limited; Union of Canadian Retail Employees (Respondents).

Unit #1: "all employees of Loblaw Groceterias Co. Limited in its retail stores in the Township of Nepean, save and except store manager, persons above the rank of store manager, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period."

Number of names of persons on voters' list		16
Number of persons who cast ballots	16	
Number of ballots marked in favour of applicants	14	
Number of ballots marked in favour of Union of Canadian Retail Employees	2	

Unit #2: "all employees of Loblaw Groceterias Co. Limited regularly employed for not more than 24 hours per week and students employed during the school vacation period in its retail stores in the Township of Nepean, save and except store manager, persons above the rank of store manager, and persons referred to in bargaining unit #1."

Number of names of persons on revised voters' list		24
Number of persons who cast ballots	24	

Number of ballots marked in favour of applicants	21	
Number of ballots marked in favour of Union of Canadian Retail Employees	3	

Unit #3: "all employees of Loblaw Groceterias Co. Limited in its retail stores in the Township of Gloucester, save and except store manager, persons above the rank of store manager, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period."

Number of names of persons on revised voters' list		10
Number of persons who cast ballots	12	
Ballots segregated and not counted	2	
Number of ballots marked in favour of applicants	9	
Number of ballots marked in favour of Union of Canadian Retail Employees	1	

Unit #4: "all employees of Loblaw Groceterias Co. Limited regularly employed for not more than 24 hours per week and students employed during the school vacation period in its retail stores in the Township of Gloucester, save and except store manager, persons above the rank of store manager, and persons referred to in bargaining unit #3.

Number of names of persons on revised voters' list		20
Number of persons who cast ballots	20	
Number of ballots marked in favour or applicants	20	
Number of ballots marked in favour of Union of Canadian Retail Employees	0	

JURISDICTIONAL DISPUTES

17161(a)-69-JD: Abe Dick Masonry Limited (Complainant) v. United Brotherhood of Carpenters and Joiners of America, Local Union 18, and Labourers' International Union of North America, Local 837 (Respondents).

17650-70-JD: Local No. 31 Marble Masons, Tile Setters and Terrazzo Mechanics affiliated with the Bricklayers, Masons and Plasterers International Union of America (Complainant) v. Local 598 of the Operative Plasterers' and Cement Masons' International Association of the United States and Canada and Omega Marble Company Ltd. (Respondents). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 231).

17823-70-JD(A): LESLIE L. SOLTY & SONS LIMITED (COMPLAINANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 (RESPONDENT). (WITHDRAWN).

17823-70-JD(B): LESLIE L. SOLTY & SONS LIMITED (COMPLAINANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 (RESPONDENT). (WITHDRAWN).

APPLICATION FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING

MAY

17411-69-M: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U. (APPLICANT) V. VICTORIA HOSPITAL, LONDON, ONTARIO (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 239).

REFERENCE TO BOARD PURSUANT TO SECTION 79A

17470-69-M: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (TRADE UNION) V. GARDEN CITY LAUNDRY LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 240).

17610-70-M: STANDARD PRODUCTS (GEORGETOWN) LIMITED (EMPLOYER) V. INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (TRADE UNION). (DISMISSED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

17209-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. MODERN CABINET INDUSTRIES OF OTTAWA LIMITED (RESPONDENT). (REQUEST DENIED).

17677-70-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 124 (APPLICANT) V. NEW STYLE DRYWALL INC. (RESPONDENT). (REQUEST GRANTED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79(2)

17385-69-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA AND ITS LOCAL 673 (APPLICANT) V. DOUGLAS AIRCRAFT COMPANY OF CANADA LTD. (RESPONDENT). (REQUEST DENIED).

INDEXED ENDORSEMENTS - CERTIFICATION

16411-69-R: Canadian Union of Public Employees (Applicant) v. Simcoe County Board of Education (Respondent) v. Building Service Employees' International Union, Local 204 AFL,CIO,CLC. New Name of Union: Service Employees' International Union, Local 204(Intervener).

BEFORE: Rory F. Egan, Vice-Chairman and Board Members O. Hodges and H.F. Irwin.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER H.F. IRWIN: May 20, 1970.

1. This is an application for certification for certain employees of Simcoe County Board of Education.

. . .

3. The respondent and the intervener took the position that bargaining rights were held by the intervener with respect to former employees of the Alliston District High School Board and former employees of Barrie District Collegiate Board. The Intervener filed with the Board a copy of an agreement dated the 20th day of November, 1967 made between it and Barrie District Collegiate Board. The agreement states that it shall remain in force until the 31st day of December, 1969, and from year to year thereafter subject to notice. The intervener also filed with the Board an agreement dated the 16th day of April, 1969 between it and Simcoe County Board of Education. The latter runs to the 31st day of December, 1969, and from year to year thereafter subject to notice. Both documents bear the seal of the respective Boards and the signatures of persons purporting to represent the intervener. The respondent acknowledged the agreements and relied upon them as a partial bar to the present application in the areas to which each relates.

4. The agreement between the intervener and Barrie District Collegiate Board is no longer valid since that Board ceased to exist on December 31st, 1968 by virtue of the provisions of The Secondary Schools and Boards of Education Amendment Act 1968. It does serve however, as confirmation of the existence of bargaining rights formerly held by the intervener with respect to certain persons who are now employees of the respondent. It is otherwise, however, with the Banting Memorial High School agreement between Simcoe County Board of Education and the intervener. That agreement was entered into by the intervener and the new entity created by the foregoing Act, that is, the respondent herein. The preamble to the agreement reads as follows:

> "WHEREAS the Union by certificate dated August 26th, 1964, is the certified bargaining agent for all employees of the Alliston District High School Board employed in its caretaking amd maintenance

STAFF, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK;

AND WHEREAS THE ALLISTON DISTRICT HIGH SCHOOL BOARD NO LONGER EXISTS, BUT THE BANTING MEMORIAL HIGH SCHOOL LOCATED AT ALLISTON IS UNDER THE JURISDICTION OF THE ABOVE-NAMED EMPLOYER;

AND WHEREAS THE ABOVE-NAMED EMPLOYER HAS AGREED VOLUNTARILY TO RECOGNIZE THE UNION AS THE BARGAINING AGENT FOR THE EMPLOYEES AT ALLISTON HEREINAFTER MENTION;"

5. IT IS OUR OPINION THAT, NOT WITHSTANDING THE FACT THAT THE EMPLOYEES OF THE NEW BOARD ARE DEEMED TO HAVE BEEN INTERMINGLED AS PROVIDED FOR IN SECTION 47a(10) OF THE LABOUR RELATIONS ACT, IT REMAINED OPEN TO THE PARTIES CONCERNED TO ENTER INTO A COLLECTIVE AGREEMENT SUCH AS THEY DID, HAVING TO DO WITH A PARTICULAR GROUP OF THOSE EMPLOYEES. IT IS TRUE THAT IN PAST INSTANCES INVOLVING BOARDS OF EDUCATION AFFECTED BY THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT AND SECTION 47a, THE BOARD HAS FOUND THAT ALL EMPLOYEES IN QUESTION, WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT, CONSTITUTED AN APPROPRIATE BARGAINING UNIT. THESE FINDINGS, HOWEVER, CANNOT IN OUR OPINION BE TAKEN TO PREVENT A TRADE UNION AND AN EMPLOYER FROM ENTERING INTO A COLLECTIVE AGREEMENT, EITHER BEFORE OR AFTER A FINDING BY THE BOARD AS TO AN APPROPRIATE BARGAINING UNIT, HAVING TO DO ONLY WITH A SPECIFIC CLASS OR GROUP OF EMPLOYEES WITHIN OR BEYOND THAT UNIT. ALL OF THIS, OF COURSE, ASSUMING PROPRIETY IN ALL OTHER ASPECTS OF THE RELATIONSHIP. IN OUR OPINION, THEREFORE, THE SCOPE OF THE AGREEMENT MUST BE TAKEN INTO ACCOUNT IN DEFINING AN APPROPRIATE UNIT FOR THE PURPOSES OF THIS APPLICATION.

6. THE BOARD NOTES THE AGREEMENT OF THE PARTIES RECORDED IN THE REPORT OF THE EXAMINER HEREIN THAT F. S. KELL - SUPERVISOR, MAINTENANCE AND OPERATION; E. J. BURTON - SUPERVISOR, PAYROLL AND PERSONNEL; W. ANDERSON - AREA MAINTENANCE SUPERVISOR; E. BROCK - AREA MAINTENANCE SUPERVISOR; G. STOREY - AREA MAINTENANCE SUPERVISOR; J. SOMERS - AREA MAINTENANCE SUPERVISOR; R. REID - AREA MAINTENANCE SUPERVISOR; A. W. CLEMENTS - MAINTENANCE FOREMAN; G. HAMMELL - CUSTODIAL FOREMAN; W. ARMSTRONG - TRANSPORTATION FOREMAN ARE EXCLUDED FROM THE BARGAINING UNIT SINCE THEY EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE ACT.

7. THE BOARD NOTES THE FURTHER AGREEMENT OF THE PARTIES TO THE EXCLUSION OF STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

8. ON THE BASIS OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER INCLUSIVE OF THE EXHIBITS THERETO FILED WITH THE EXAMINER, THE BOARD FINDS THAT ON THE DATE OF THE APPLICATION JACOB KUIKMAN, CLASSIFIED AS A LEAD PAINTING HAND AND JOSEPH HUZAR, CLASSIFIED AS A LEAD HAND IN THE CARPENTER SHOP, DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT

EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF THE LABOUR RELATIONS ACT AND ARE THEREFORE INCLUDED IN THE BARGAINING UNIT.

9. THE BOARD FURTHER FINDS, ON THE BASIS MENTIONED ABOVE, THAT THOSE PERSONS DESIGNATED AS HEAD CUSTODIANS OF WHOM THE PARTIES AGREED WILLIAM NICHOL WAS REPRESENTATIVE AND WHO ARE DESCRIBED BY THE PARTIES AS COMPRISING GROUP 1 AND THOSE PERSONS DESIGNATED AS HEAD CUSTODIANS WHOM THE PARTIES AGREED CLIFFORD WHITLEY WAS REPRESENTATIVE AND WHO ARE DESCRIBED BY THE PARTIES AS COMPRISING GROUP 2, EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE LABOUR RELATIONS ACT AND ARE THEREFORE EXCLUDED FROM THE BARGAINING UNIT.

10. THE BOARD FURTHER FINDS, ON THE LIKE BASIS AS ABOVE , THAT PERSONS DESIGNATED AS HEAD CUSTODIANS OF WHOM THE PARTIES AGREED HAROLD WALKER WAS REPRESENTATIVE AND WHO ARE DESCRIBED BY THE PARTIES AS COMPRISING GROUP 3, DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF THE LABOUR RELATIONS ACT AND ARE THEREFORE INCLUDED IN THE BARGAINING UNIT.

11. HAVING REGARD TO THE FOREGOING THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT HEAD CUSTODIANS, PERSONS ABOVE THE RANK OF HEAD CUSTODIAN, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY THE COLLECTIVE AGREEMENT DATED APRIL 16TH, 1969 BETWEEN THE RESPONDENT AND THE INTERVENER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

12. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 17, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

13. HAVING REGARD TO THE PROVISIONS OF SUBSECTIONS (7) AND (10) OF SECTION 47A, THE BOARD DIRECTS THE TAKING OF A REPRESENTATION VOTE. THE VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE. (SEE NORTH BAY BOARD OF EDUCATION CASE, O.L.R.B. MONTHLY REPORTS JULY 1969, P. 489).

14. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER.

15. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER O. HODGES: MAY 20, 1970.

1. I DISSENT. WITH RESPECT TO THE EXCLUSION OF HEAD CUSTODIANS DESIGNATED IN PARAGRAPH 9 OF THE MAJORITY DECISION, MY FINDING IS THAT THIS GROUP DO NOT EXERCISE MANAGERIAL FUNCTIONS AND I WOULD THEREFORE INCLUDE THEM IN THE BARGAINING UNIT ALONG WITH THE GROUP 3 DESIGNATED IN PARAGRAPH 10.

2. OTHER THAN IN THE ABOVE, I CONCUR WITH THE MAJORITY DECISION.

16535-69-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA (INTERNATIONAL UNION) (APPLICANT) v. ONTARIO HOUSING CORPORATION (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: R. KOSKIE, A. MINSKY AND G. GALLAGHER FOR THE APPLICANT, C. G. RIGGS, E. J. WHALEY, R. SCOTT, R. W. RIGGS AND G. H. FULFORD FOR THE RESPONDENT.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER E. BOYER: MAY 5, 1970.

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4. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT COMPOSED OF ALL JOURNEYMEN PAINTERS AND APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN BOARD CONSTRUCTION AREA NO. 8, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR.

5. COUNSEL FOR THE RESPONDENT SUBMITS THAT THE RESPONDENT IS A CROWN AGENCY WITHIN THE MEANING OF THE CROWN AGENCY ACT R.S.O. 1960, c. 81 AND AT COMMON LAW AND THAT THE ONTARIO LABOUR RELATIONS ACT R.S.O. 1960, c. 202 DOES NOT APPLY TO THE RESPONDENT. COUNSEL ALSO REFERRED TO SECTION 11 OF THE INTERPRETATION ACT R.S.O. 1960, c. 191 WHICH PROVIDES THAT NO ACT AFFECTS THE RIGHT OF HER MAJESTY, HER HEIRS OR SUCCESSORS, UNLESS IT IS EXPRESSLY STATED THEREIN THAT HER MAJESTY IS BOUND THEREBY. COUNSEL SUBMITS THAT THERE IS NO PROVISION IN THE LABOUR RELATIONS ACT OR IN THE ONTARIO HOUSING CORPORATION ACT 1964, STATUTES OF ONTARIO 1963-64, c. 76, UNDER WHICH THE RESPONDENT WAS ESTABLISHED, WHICH MAKES THE PROVISIONS OF THE LABOUR RELATIONS ACT APPLICABLE TO THE ONTARIO HOUSING CORPORATION. IN SUPPORT OF HIS SUBMISSION, COUNSEL CITED THE POWERS VESTED IN THE CORPORATION UNDER THE ONTARIO HOUSING CORPORATION ACT 1964 AND ALSO RELIED ON THE VIVA VOCE EVIDENCE OF A SENIOR OFFICER OF THE CORPORATION AS TO THE MANNER IN WHICH THE RESPONDENT IMPLEMENTS ITS AUTHORITY. ACCORDING TO COUNSEL, IN THE EXECUTION OF ITS POWERS, THE CORPORATION, AT EVERY TURN, IS SUBJECT TO THE CONTROL OF THE LIEUTENANT-GOVERNOR-IN-COUNCIL, OR MORE SPECIFICALLY THE TREASURY BOARD OF THE GOVERNMENT.

6. Counsel for the applicant, on the other hand, submitted that the Corporation has been vested with sufficiently wide discretionary powers to act on its own behalf which, in fact, it exercises, that the respondent does not fall within the ambit of a Crown agency either at common law or under The Crown Agency Act (supra). Counsel for the applicant accordingly argues that the Corporation falls within the purview of The Labour Relations Act and that the Board therefore has the jurisdiction to deal with the instant application.

7. Briefly stated, the Ontario Housing Corporation is run by a Council which is also its Board of Directors, all of whom are appointed by the Lieutenant-Governor-in-Council. The Board of Directors makes its own by-laws regulating its proceedings and the management of its affairs. The Board of Directors authorizes the appointment of employees under the Public Service Act 1961-62, Statutes of Ontario 1961-62, c. 121, as it requires them. Not all employees, however, including those who are the subject of the instant application, are hired under the Public Service Act (supra).

8. In general terms, the Corporation has the powers to plan, construct and manage housing projects and building developments. (Specific reference is made to The Housing Development Act R.S.O. 1960, c. 182.) The Corporation can make loans, grants, guarantees or advances for the construction of housing accommodation and building developments and can enter into agreements for these purposes. As well, the Corporation can borrow and raise money to carry out its purposes by the issue and sale of debentures or by temporary loans from banks and can sell the debentures on such terms as the Board of Directors deems proper. All of these powers, however, are subject to the approval of the Lieutenant-Governor-in-Council.

9. By the legislation, the Treasurer of Ontario may guarantee payments by the Province of any debentures, bills or notes issued by the Corporation and may purchase the same on such terms and conditions that the Treasury Board deems expedient. The accounts of financial transactions of the Corporation are audited annually by the Provincial Auditor and a report of the audit is made to the Corporation and the Minister of Economics and Development. The Minister submits the report to the Government which, in turn, lays it before the Assembly.

10. According to the testimony of a senior officer of the Corporation, the staff of the Corporation plans and works out the details of housing and building projects, which includes negotiations for the purchase and sale of land, the financing of the projects, and the budgetary allocations of monies. All of this work is done under the guidance and direction of the Board of Directors. All plans and their financing, however, ultimately must have the approval of the Treasury Board. Moreover, some broad policy decision affecting the operations of the Corporation are made by the Government itself.

11. We would mention that according to the evidence when the respondent came into existence, the Minister of Economics and Development extended voluntary recognition to the Canadian Union of Public Employees, Local 767 as bargaining agent for a unit of employees of the Corporation. The unit is composed of all employees of the Corporation in Metropolitan Toronto save and except foremen, office staff, persons hired under the Public Service Act, and employees in the temporary class of employees of the Corporation who are not members of the Union by reason of their membership in another union. The employees for whom the applicant is seeking certification fall within the latter exclusion of the bargaining unit. Since 1964, C.U.P.E., Local 767 and the Corporation have been parties to a series of collective agreements, the last one expiring on December 31, 1969. At the time of the Board hearing of the instant application, the parties were negotiating a new collective agreement.

12. In our endeavour to make a determination on the issue raised by counsel for the respondent, namely, whether or not the Ontario Housing Corporation is a Crown agency at common law and under The Crown Agency Act (supra), we have considered the provisions of the Ontario Housing Corporation Act 1964 (supra), the operations of the Corporation as revealed by the viva voce evidence adduced by the respondent, and the representations of the parties. The Board has also reviewed the judicial authorities relevant to this issue, most of which were referred to either by counsel for the applicant or counsel for the respondent. More particularly, the Board reviewed the following judgments: Fox v. The Government of Newfoundland [1898] A.C. 667; Metropolitan Meat Industry v. Sheedy [1927] A.C. 899; The City of Halifax v. Halifax Harbour Commissioners [1935] S.C.R. 215; International Railway Company v. Niagara Parks Commission [1941] A.C. 328; Simmons v. Niagara Parks Commission and Niagara-on-the-Lake Golf Club [1945] O.R. 326 (C.A.) 802; Brodie v. The King [1946] Ex. C.R. 283; Tamlin v. Hannaford [1949] T.L.R. 422; Governors of the University of Toronto v. Minister of National Revenue [1950] Ex. C.R. 117; Bank Voor Handel en Scheepvaart N.V. v. Administrator of Hungarian Property [1954] 1 A.E.R. 969; Jamieson's Foods Ltd. v. Ontario Food Terminal Board [1959] (C.A.) 18 D.L.R. (2d), 168, [1961] S.C.R. 276; Regina v. Ontario Labour Relations Board, Ex parte Ontario Food Terminal Board [1961] 61 C.L.L.C. Vol. 2 960, (C.A.) [1963] 63 C.L.L.C. Vol. 2 685.

13. On an examination of the above authorities, it seems clear that the test to be applied is the degree of control exercised or retained by the Crown. Stated another way -- does the body in question have sufficient discretionary power to make it independent of the Crown or does the degree of control exercised by the Crown make the body an agent of the Crown? The answer to that question, obviously, is dependent on the power and authority of the body concerned in each particular case.

14. With respect to the Ontario Housing Corporation, we acknowledge that the submission advanced by counsel for the respondent that the Corporation is an agency of the Crown is not without some merit. It is our conclusion, however, that the Corporation exercises a degree of independent discretion which removes it from the realm of a Crown agency. At the least,

A HIGHLY CONVINCING BRIEF CAN BE MAKE TO SUPPORT SUCH A CONCLUSION. IN THESE CIRCUMSTANCES, THE BOARD IS OF THE OPINION THAT IT SHOULD NOT DECLINE TO ENTERTAIN THE APPLICATION. STATED MORE POSITIVELY, THE BOARD ACCEPTS JURISDICTION IN THE INSTANT CASE.

15. THE BOARD THEREFORE FINDS THAT ALL JOURNEYMEN PAINTERS AND APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

. . .

17. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C. MAY 5, 1970.

I DISSENT. I HAVE READ THE DECISION OF MY COLLEAGUES BUT AM UNABLE TO ARRIVE AT THE SAME CONCLUSION.

I, TOO, HAVE CONSIDERED THE PROVISIONS OF THE CROWN AGENCY ACT, R.S.O. 1960, C. 182 AND AMENDMENTS THERETO, THE INTERPRETATION ACT, R.S.O. 1960, C. 191, AND THE ONTARIO HOUSING CORPORATION ACT, 1964, STATUTES OF ONTARIO 1963-64, C. 76 AND AMENDMENTS THERETO.

I HAVE ALSO CONSIDERED THE RELEVANT JUDICIAL AUTHORITIES CITED BY MY COLLEAGUES IN PARAGRAPH 12 OF THEIR DECISION AND HAVE REVIEWED THE VIVA VOCE EVIDENCE ADDUCED BY THE RESPONDENT.

IN ADDITION, I HAVE ATTEMPTED TO COMPARE THE FACTS OF THIS CASE WITH THE PREVIOUS DECISION OF THIS BOARD IN FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY, OLRB MONTHLY REPORT, DECEMBER 1967, P. 829, AND THE SUCCEEDING CASES OF THIS BOARD DEALING WITH COMMUNITY COLLEGES.

IT IS CLEAR FROM THE VIVA VOCE EVIDENCE HEARD BY US THAT THIS BOARD HAS NEVER HERETOFORE GRANTED CERTIFICATION TO ANY BARGAINING UNIT OF EMPLOYEES OF THE RESPONDENT IN THIS CASE.

I AM IN AGREEMENT WITH THE MAJORITY THAT AT COMMON LAW, AN EXAMINATION OF THE AUTHORITIES REVEALS THAT THE TEST TO BE APPLIED IN DETERMINING WHETHER THE RESPONDENT IS A CROWN AGENCY IS THE DEGREE OF CONTROL EXERCISED OR RETAINED BY THE CROWN.

IN FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY, SUPRA, THE BOARD REVIEWED THE JUDICIAL AUTHORITIES, GAVE A DESCRIPTION OF THE AUTHORITY VESTED IN THE BOARD OF GOVERNORS, AND CAME TO THE CONCLUSION THAT AT COMMON LAW, THE RESPONDENT WAS A SERVANT OR AGENT OF THE CROWN AND ACCORDINGLY DECLINED TO ACCEPT JURISDICTION TO ENTERTAIN THE APPLICATION.

I HAVE COMPARED THE AUTHORITY VESTED IN THE RESPONDENT IN THE INSTANT CASE AND MUST CONCLUDE THAT THE RESTRICTIONS AND LIMITATIONS PLACED ON THE ONTARIO HOUSING CORPORATION ARE SO SIMILAR TO THE RESTRICTIONS AND LIMITATIONS PLACED UPON THE BOARD OF GOVERNORS IN THE FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY CASE, THAT I FIND THEM ALMOST UNDISTINGUISHABLE. ACCORDINGLY, I AM UNABLE TO REACH A DIFFERENT CONCLUSION THAN DID THE BOARD IN THE FANSHAWE CASE.

IN ADDITION, I MUST ALSO FIND THAT THE RESPONDENT IS A CROWN AGENCY WITHIN THE MEANING OF SECTION 1 OF THE CROWN AGENCY ACT (SUPRA).

SECTION 1 OF THE CROWN AGENCY ACT READS:-

> IN THIS ACT, "CROWN AGENCY" MEANS A BOARD, COMMISSION, RAILWAY, PUBLIC UTILITY, UNIVERSITY, MANUFACTORY, COMPANY OR AGENCY OWNED, CONTROLLED OR OPERATED BY HER MAJESTY IN RIGHT OF ONTARIO, OR BY THE GOVERNMENT OF ONTARIO, OR UNDER THE AUTHORITY OF THE LEGISLATURE OR THE LIEUTENANT GOVERNOR IN COUNCIL.

SECTION 2(1) OF THE ONTARIO HOUSING CORPORATION ACT, 1964 (SUPRA) READS:-

> THERE IS HEREBY ESTABLISHED ON BEHALF OF HER MAJESTY IN RIGHT OF ONTARIO A CORPORATION WITHOUT SHARE CAPITAL UNDER THE NAME OF "ONTARIO HOUSING CORPORATION", CONSISTING OF NOT FEWER THAN SEVEN AND NOT MORE THAN ELEVEN MEMBERS APPOINTED BY THE LIEUTENANT GOVERNOR IN COUNCIL.

IN CONCLUSION, I FIND THAT BOTH AT COMMON LAW AND WITHIN THE PROVISIONS OF THE CROWN AGENCY ACT (SUPRA), THE RESPONDENT IS AN AGENT OF THE CROWN AND THE ONTARIO LABOUR RELATIONS ACT HAS NO APPLICATION TO IT.

IT FOLLOWS, THEREFORE, THAT I WOULD FIND THAT THIS BOARD IS WITHOUT JURISDICTION TO DEAL WITH THIS APPLICATION AND I WOULD HAVE ACCORDINGLY DISMISSED SUCH APPLICATION.

16628-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. CANADA SAFEWAY LIMITED (RESPONDENT) v. LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (INTERVENER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: Lorne Morphy and Clifford Evans for the applicant; E. Horembala and V. Pinchin for the respondent; T.E. Armstrong and Vic Pathe for the intervener.

DECISION OF O. B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE: May 15, 1970.

1. In this case the intervener made certain objections as to the conduct which occurred prior to a vote which was taken. Accordingly, the Board set this matter down for hearing in order to entertain evidence with respect to the intervener's allegations.

2. At the opening of the hearing counsel for the applicant made two preliminary objections concerning the Board's right to proceed to deal with the allegations. The first allegation concerned the question of timeliness. At the hearing the Board ruled that the application of the intervener was timely and alternately, in the circumstances the time would be extended pursuant to Rule 57 of the Board's Rules of Procedure.

3. The second preliminary objection concerned the right of the parties to make representations as to the matters relating to the representation vote after the vote was held and to the Board's jurisdiction to entertain such representations. The relevant provision of The Labour Relations Act is section 7(3) which provides:

> 7(3) If on the taking of a representation vote more than 50 per cent of the ballots of all those eligible to vote are cast in favour of the trade union, and in other cases, if the Board is satisfied that more than 55 per cent of the employees in the bargaining unit are members of the trade union, the Board shall certify the trade union as the bargaining agent of the employees in the bargaining unit.

Rule 45(1) of the Rules of Procedure is also relevant. It provides:

> 45(1) Subject to subsection 3, where a representation vote is taken after the hearing of an application,
>
> (a) a party: or
>
> (b) any employee or representative of a group of employees,
>
> who desires to make representations as to any matter relating to the representation vote, or as to the accuracy of the report of the returning officer, or as to the conclusions the Board should reach in view

> OF THE REPORT, SHALL FILE A STATEMENT OF DESIRE AS PRESCRIBED IN FORM 43 OR 45, AS THE CASE MAY BE, ON OR BEFORE THE LAST DAY FOR THE POSTING OF THE COPIES OF THE REPORT AND NOTICES UNDER SUBSECTION 3 OF SECTION 44.
>
> 45(4) UPON RECEIVING A STATEMENT OF DESIRE TO MAKE REPRESENTATIONS IN THE FORM AND MANNER REQUIRED BY THIS SECTION THAT CONTAINS A STATEMENT THAT A PARTY OR ANY EMPLOYEE OR REPRESENTATIVE OF A GROUP OF EMPLOYEES DESIRES A HEARING BEFORE THE BOARD, THE REGISTRAR SHALL SERVE A NOTICE OF HEARING IN FORM 7 UPON EACH OF THE PARTIES TO THE PROCEEDINGS AND UPON EACH PERSON WHO HAS FILED A STATEMENT.

4. IN THIS CASE ON THE TAKING OF A REPRESENTATION VOTE MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CASE IN FAVOUR OF THE APPLICANT, AND ACCORDINGLY THE APPLICANT SUBMITS THAT PURSUANT TO SECTION 7(3) THE BOARD IS COMPELLED TO CERTIFY THE APPLICANT AS THE BARGAINING AGENT FOR THE EMPLOYEES CONCERNED . THE APPLICANT SUBMITS THAT SECTION 7(3) IS A MANDATORY PROVISION AND THAT THE BOARD HAS NO JURISDICTION TO ENTERTAIN REPRESENTATIONS ONCE THE VOTE HAS BEEN HELD AND THE REQUIRED PER CENT OF BALLOTS HAS BEEN CAST.

5. PURSUANT TO RULE 43 WHERE THE BOARD DIRECTS THE TAKING OF A REPRESENTATION VOTE THE MATTER IS REFERRED TO THE REGISTRAR. THE REGISTRAR IS THEN ENTRUSTED WITH PERFORMING THE PROPER DETAILS REGARDING THE VOTE. ONCE THE MATTER REACHES THE REGISTRAR IT IS NOT OUT OF THE HANDS OF THE BOARD. IN GENERAL, WHILE THE REGISTRAR IS ENTRUSTED WITH THE DETAILS OF THE VOTE THE BOARD STILL MAINTAINS A SUPERVISORY ROLE IN THE CONDUCT OF ELECTIONS. IT IS SUFFICIENT TO SAY THAT THE BOARD EXERCISES A GENERAL SUPERVISORY POWER OVER REPRESENTATION VOTES WHICH ENSURES THAT DEMOCRATIC PRINCIPLES SHALL PREVAIL WITHIN THE FRAMEWORK OF LABOUR RELATIONS. WHERE THERE IS ANY IMPROPRIETY OR IRREGULARITY IN THE REPRESENTATION VOTE THE BOARD PURSUANT TO ITS RULES MAY NULLIFY THAT VOTE AND AS SUCH THE MATTER MAY BE TREATED AS IF NO VOTE WERE HELD.

6. SURELY SECTION 7(3) OF THE ACT CONTEMPLATES THAT WHEN BALLOTS ARE CAST BY ELIGIBLE VOTERS THAT THEY WILL BE CAST IN THE PROPER ATMOSPHERE. THE ARGUMENT ADVANCED BY THE APPLICANT, TAKEN AT THE EXTREME, WOULD COMPEL THE BOARD TO CERTIFY AN APPLICANT TRADE UNION EVEN THOUGH EMPLOYEES HAD BEEN SUBJECT TO UNFAIR LABOUR PRACTICES INCLUDING FRAUD. TO UPHOLD THAT POSITION RESTRICTS THE BOARD TO LOOK AT THE END RESULT OF THE BALLOTING FOR THE PURPOSE OF MAKING A SIMPLE MATHEMATICAL CALCULATION. WE ARE UNABLE TO AGREE WITH THAT CONTENTION. RULE 45 IS NOT IN CONFLICT WITH SECTION 7(3). CERTAINLY IN ENTRUSTING REPRESENTATION VOTES TO THE BOARD AND MAKING PROVISION FOR A HEARING AS TO THE PROPRIETY OF THE VOTE,

IT WAS NOT INTENDED THAT THE BOARD'S INTEREST IN REPRESENTATION VOTES WAS RESTRICTED TO MAKING A SIMPLE COUNT.

7. IN THE RESULT WE HOLD THAT IN REPRESENTATION VOTES THE BOARD HAS THE GENERAL POWER TO SUPERVISE THE VOTE AND TO SEE THAT IT IS CONDUCTED IN A PROPER AND DEMOCRATIC MANNER HAVING PARTICULAR REGARD TO THE ATMOSPHERE OF LABOUR RELATIONS. ACCORDINGLY, THE SECOND PRELIMINARY OBJECTION BY THE APPLICANT IS DISMISSED.

8. AT THE FIRST HEARING IN THIS CASE, THE APPLICANT, SUPPORTED BY THE RESPONDENT OBJECTED TO CERTAIN EVIDENCE WHICH WAS TENDERED BY THE INTERVENER THROUGH IT'S WITNESS MISS PREDINCHUK. MORE PARTICULARLY MISS PREDINCHUK TESTIFIED THAT SHE WAS APPROACHED BY THE ASSISTANT MEAT MANAGER WHO ASKED HER TO SIGN A PETITION. THE APPLICANT SUPPORTED BY THE RESPONDENT SUBMITTED THAT ANY STATEMENT MADE BY OTHER PERSONS TO MISS PREDINCHUK WERE INADMISSIBLE AS VIOLATING THE HEARSAY RULE. THE APPLICANT AND THE RESPONDENT ALSO SUBMITTED THAT STATEMENTS MADE WERE NOT RELEVANT TO THE CHARGES. COUNSEL FOR THE INTERVENER, WHO HAS MUCH EXPERIENCE BEFORE THIS BOARD, SUBMITTED THAT THE EVIDENCE WAS RELEVANT, BUT REQUESTED THAT HE NOT BE REQUIRED TO ARGUE THE MATTER AT THIS STAGE OF THE PROCEEDING AS THE ARGUMENT WOULD INDICATE THE COURSE OF HIS EVIDENCE AND THE ULTIMATE ARGUMENT BASED ON THE FACTS.

9. SINCE THIS MATTER AROSE AFTER A FEW QUESTIONS WITH THE FIRST WITNESS IN THE PROCEEDINGS, THE BOARD IS IN A VERY DIFFICULT POSITION TO RULE ON THE RELEVANCY OR POSSIBLE RELEVANCY AS TO THE LINE OF QUESTIONING UPON WHICH COUNSEL FOR THE INTERVENER IS EMBARKING. ACCORDINGLY, IT IS OUR OPINION THAT AT THIS STAGE OF THE PROCEEDING THE BOARD SHOULD NOT FORECLOSE COUNSEL PROCEEDING WITH THE LINE OF QUESTIONING PROPOSED AND THAT THE BOARD WILL LISTEN TO THE EVIDENCE TENDERED SUBJECT HOWEVER TO A LATER RULING ON THE RELEVANCY OF THAT EVIDENCE.

10. AS TO THE QUESTION AS TO WHETHER OR NOT THE EVIDENCE TENDERED WAS HEARSAY, WHILE MR. SHIME AND MR. ROBINSON INDICATED DURING THE HEARING THAT THE MATTER APPEARED TO BE HEARSAY, ON REFLECTION MR. SHIME IS OF THE OPINION THE ANSWER GIVEN WAS NOT HEARSAY AND JOINS WITH MR. O'KEEFFE IN ACCEPTING THE EVIDENCE TENDERED AND DENYING THE OBJECTION RAISED BY THE APPLICANT AND THE RESPONDENT. ACCORDINGLY, A MAJORITY OF THE BOARD IS PREPARED TO ACCEPT THE ANSWER GIVEN BY THE WITNESS.

11. HOWEVER, THE BOARD IS NOT PREPARED TO MAKE A GENERAL RULING BASED ON HYPOTHETICAL QUESTIONS AND ANSWERS WHICH MAY ARISE AND THE BOARD WILL RULE ON THOSE QUESTIONS AS THEY DO ARISE IN THE COURSE OF THE PROCEEDINGS.

17090-69-R: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) v. WHITMAN PUBLISHING-GOLDEN PRESS OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O. B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: L.A. MACLEAN AND W.P. COLLINS FOR THE APPLICANT; W.K. WINKLER, R.C. FILION, M.M. CONNOLLY AND J.E. BROTHIER FOR THE RESPONDENT; NO ONE APPEARING FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: MAY 15, 1970.

. . .

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT GALT, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FORNOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. IN THIS CASE THE BOARD CONDUCTED AN INVESTIGATION INTO CERTAIN DISCREPANCIES CONCERNING THE EVIDENCE OF MEMBERSHIP AND ACCORDINGLY CONDUCTED A HEARING TO INQUIRE INTO THE CIRCUMSTANCES UNDER WHICH THE INITIATION FEE RELATING TO THE APPLICATION FOR MEMBERSHIP OF RONALD REED, WAS ALLEGED TO HAVE BEEN PAID. MORE PARTICULARLY, THE BOARD INQUIRED INTO THE ALLEGATION THAT RONALD REED DID NOT PAY ANY MONEY ON HIS OWN BEHALF. HAVING REGARD TO THE EVIDENCE AND THE SUBMISSIONS OF THE PARTIES AND HAVING REGARD TO THE DECISION OF THIS BOARD IN UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC V. B.F. GOODRICH CANADA LIMITED, OLRB MTHLY REP DECEMBER 1969 P. 1085, THE BOARD FINDS THAT THERE WAS NO IMPROPRIETY OR IRREGULARITY CONCERNING THE MEMBERSHIP EVIDENCE OF MR. REED.

5. IN THIS MATTER A STATEMENT OF DESIRE WAS FILED AND EVIDENCE WAS ADDUCED CONCERNING THE ORIGINATION AND CIRCULATION OF THE STATEMENT OF DESIRE. HAVING REGARD TO THE EVIDENCE AND THE ARGUMENTS ADVANCED WE ARE OF THE OPINION THAT THE STATEMENT OF DESIRE, FILED, CASTS DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED.

6. HAVING REGARD TO THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES CONCERNING THE ELIGIBILITY REQUIREMENTS OF THE APPLICANT'S CONSTITUTION, AND HAVING REGARD TO THE LABOUR RELATIONS AMENDMENT ACT, 1970, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 23RD, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

8. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

17135-69-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) v. CHATEAU-GAI WINES LIMITED (RESPONDENT) v. LOCAL 103 OF THE CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J.E.C. ROBINSON, Q.C.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER E. BOYER: MAY 20, 1970.

1. BY TELEGRAM DATED MAY 4, 1970, THE APPLICANT REQUESTED LEAVE OF THE BOARD TO WITHDRAW THE INSTANT APPLICATION.

2. HAVING REGARD TO THE STAGE AT WHICH THE APPLICANT HAD MADE ITS REQUEST, THE BOARD FOLLOWING ITS USUAL PRACTICE DISMISSED THE APPLICATION.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: MAY 20, 1970.

I AGREE WITH THE DECISION OF THE MAJORITY IN DISMISSING THIS APPLICATION. I WOULD POINT OUT, HOWEVER, THAT, IN MY OPINION, THERE IS NOTHING TO PRECLUDE THE RESPONDENT FROM RAISING THE ALLEGATIONS OF IMPROPRIETY IN THE PRESENT ORGANIZATIONAL CAMPAIGN IN ANY SUBSEQUENT APPLICATION WHICH MAY BE MADE. THAT BEING SO I WOULD HAVE DIRECTED THE ATTENTION OF THE PARTIES TO THE MATHIAS OUELLETTE CASE, 56 CLLC 1555, WITH RESPECT TO THE TWO UNITS WHEREIN THE BOARD DIRECTED A REPRESENTATION VOTE.

17222-69-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO, CLC (APPLICANT) v. SEVEN-UP (ONTARIO) LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. SACK AND DAVID WAGNER FOR THE APPLICANT, A. J. CLARK, I. F. KEEGAN AND H. WOOLEY FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 19, 1970.

1. FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE ON FEBRUARY 19, 1970, THE APPLICANT REQUESTED THE BOARD TO DIRECT THAT A NEW REPRESENTATION VOTE BE TAKEN IN THIS CASE, ON THE GROUNDS THAT THE VOTE TAKEN ON FEBRUARY 19, 1970 FAILED TO INDICATE A TRUE EXPRESSION OF THE EMPLOYEES' WISHES ON THE GROUNDS THAT THE ACTIVITIES OF THE RESPONDENT CONSTITUTE UNDUE INFLUENCE.

2. THE EVIDENCE IN THIS CASE MADE IT ABUNDANTLY CLEAR THAT THE RESPONDENT ENGAGED IN ACTIVITIES WHICH CLEARLY INDICATED TO THE EMPLOYEES THAT THE RESPONDENT WAS NOT IN FAVOUR OF THE APPLICANT UNION REPRESENTING THE EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO FOR THE PURPOSES OF COLLECTIVE BARGAINING. HOWEVER, THAT FACT ALONE CANNOT BE CAUSE FOR OBJECTION. IT WOULD BE NAIVE TO THINK THAT EMPLOYEES BELIEVE THAT THE AVERAGE EMPLOYER WOULD WELCOME UNION REPRESENTATION OF THE EMPLOYEES.

3. SECTION 48 OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

> NO EMPLOYER OR EMPLOYERS' ORGANIZATION AND NO PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION SHALL PARTICIPATE IN OR INTERFERE WITH THE FORMATION, SELECTION OR ADMINISTRATION OF A TRADE UNION OR THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION OR CONTRIBUTE FINANCIAL OR OTHER SUPPORT TO A TRADE UNION, BUT NOTHING IN THIS SECTION SHALL BE DEEMED TO DEPRIVE AN EMPLOYER OF HIS FREEDOM TO EXPRESS HIS VIEWS SO LONG AS HE DOES NOT USE COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE.

THE ACT ACCORDINGLY CONTEMPLATES THAT AN EMPLOYER IS FREE TO EXPRESS HIS VIEWS WITH RESPECT TO A UNION SO LONG AS THE EMPLOYER DOES NOT USE COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE. THERE IS NO EVIDENCE IN THIS CASE TO SUGGEST THAT THE EMPLOYER USED COERCION, INTIMIDATION OR THREATS.

4. THE EVIDENCE DISCLOSED, HOWEVER, THAT THE EMPLOYER ENGAGED IN ACTIVITY WHICH WENT BEYOND A MERE EXPRESSION OF HIS VIEWS CONCERNING THE UNION. THERE HAD BEEN AN EARLIER APPLICATION FOR CERTIFICATION WHICH WAS DISMISSED ON NOVEMBER 28, 1969. HOWEVER, FOLLOWING THE DISMISSAL OF THE APPLICATION THE UNION CONTINUED ITS ATTEMPT TO ORGANIZE THE RESPONDENT'S EMPLOYEES. THE INSTANT APPLICATION WAS MADE ON SATURDAY, JANUARY 17, 1970. ON JANUARY 19TH, SOME OF THE EMPLOYEES AT THE RESPONDENT'S PLANT HAD SUGGESTED THAT A COMMITTEE BE FORMED SIMILAR TO A COMMITTEE THAT HAD PREVIOUSLY FUNCTIONED A YEAR AGO AT THE OLD PLANT THAT HAD BEEN OPERATED BY THE RESPONDENT. IT WAS SUGGESTED THAT THIS COMMITTEE BE RECONSTITUTED

IN ORDER TO PROVIDE A FORUM SO THAT THE EMPLOYEES COULD DEAL WITH MANAGEMENT AT THE NEW PLANT WHICH THE RESPONDENT HAD MOVED INTO IN OCTOBER 1969. ON JANUARY 21ST, THE EMPLOYEES NOMINATED A COMMITTEE TO SPEAK TO MANAGEMENT. LATER THE SAME DAY, THE COMPANY RECEIVED NOTICE OF THE APPLICATION FOR CERTIFICATION. SUBSEQUENTLY, ON JANUARY 28TH, THE PRESIDENT OF THE RESPONDENT MET WITH THE COMMITTEE AND DISCUSSED WORKING CONDITIONS AND BENEFITS. THE PRESIDENT HAD NOTICE OF THE APPLICATION AT THE TIME THIS MEETING WAS HELD. DURING THE DISCUSSIONS, THE COMPANY AGREED TO DO CERTAIN THINGS. THE PRESIDENT RESERVED HIS DECISION WITH RESPECT TO CERTAIN OTHER MATTERS THAT WERE DISCUSSED, INCLUDING THE QUESTION OF SHARING THE COST OF CLEANING EMPLOYEES' UNIFORMS.

5. ON FEBRUARY 13, 1970, THE COMPANY CONVENED A MEETING OF ITS EMPLOYEES DURING WORKING HOURS. THE EMPLOYEES WERE PAID FOR THE TIME THAT THEY ATTENDED THIS MEETING. AT THE MEETING A LETTER WAS READ TO THE EMPLOYEES CONCERNING THE QUESTION OF UNION REPRESENTATION. WHILE THE GREATER PORTION OF THE CONTENTS OF THE LETTER WOULD CLEARLY FALL WITHIN THE FREEDOM OF EXPRESSION AUTHORIZED BY SECTION 48 OF THE ACT, THE LETTER ALSO CONTAINED THE FOLLOWING STATEMENTS:

> YOU SHOULD NOTE ALSO THAT THOUGH WE ARE AN INCORPORATED COMPANY AND HAVE TO ACCOUNT TO THE SHAREHOLDERS AND THE GOVERNMENT FOR OUR USE OF MONEY - THEY, THE UNION, ARE NOT BOUND TO ACCOUNT PUBLICLY FOR WHAT THEY DO WITH YOUR MONEY. DO YOU KNOW WHAT THEY DO WITH IT?
>
> LET'S NOW CONSIDER A FEW OF THESE BENEFITS: (WHICH EMPLOYEES HAVE)
>
> 1) THE RIGHT TO TALK TO MANAGEMENT ABOUT ANY GRIEVANCE WHICH YOU MIGHT HAVE.
>
> 2) PROMOTIONS BASED ON ABILITY AND SENIORITY.
>
> 3) A STANDARD WORK WEEK WITH TIME AND ONE-HALF FOR ALL OVERTIME HOURS FOR ALL HOURLY PAID EMPLOYEES.
>
> 4) TWO PAID 15 MINUTE REST PERIODS FOR ALL INSIDE EMPLOYEES.
>
> 5) GENEROUS VACATIONS WITH PAY WITH VACATION SELECTION BASED ON SENIORITY.
>
> 6) 11 PLANT HOLIDAYS WHICH ARE THE SAME AS THOSE ENJOYED BY THE INDUSTRY IN TORONTO.

7) Ontario Hospital Service Commission premiums and Ontario Health Services Insurance Plant plus Blue Cross Extended Health Care Coverage premiums - 100% paid by the Company.

8) A generous weekly indemnity plan being negotiated.

. . .

10) Sharing of the cost of work clothing and footwear (in all departments where the situation warrants special clothing) and in the cost of cleaning these garments.

We want to grow together, in a harmonious and satisfactory way - with continuous employment and continuous income, week after week, throughout the years.

Following the meeting, a copy of the letter which had been read to the employees was distributed to each employee.

6. The union also complained about certain other events that took place, such as granting increases to specific employees who had previously received payment on the basis of two separate rates of pay. The company regularized their payment by providing for their pay at the higher wage rate. This apparently was done with a view to simplifying bookkeeping and payroll procedures. In addition, some five employees were offered managerial positions and two of these employees accepted the company's offer. The company made its offer to the employees in accordance with their seniority and the positions offered had been created in accordance with the company's requirements and apparently had nothing to do with the union's organizing campaign. On the date the vote took place, several assistant supervisors who were employees within the bargaining unit and who were to be affected by the creation of the two managerial positions referred to above requested a meeting to discuss their future relationships with the company. At this meeting, the company indicated that it intended to postpone a decision as to their positions as assistant supervisors pending a reassessment of the work following the appointment of the two new supervisors who were to be appointed in the immediate future. There is not sufficient evidence to find that management committed any breach of the Act with respect to these activities.

7. The events which give the Board concern are the fact that the president of the company met with the employees on January 28th after receiving notice of the application for certification. During the course of this meeting, bargaining took place concerning matters which could be included in a collective agreement. The company reserved its decision on certain matters pending further consideration. It is to be noted, however, that one of the matters which the company reserved its decision on was included in the list of benefits outlined in the letter which was read to the employees on February 13th.

8. The letter that was read on February 13th to the employees was obviously intended to influence the employees concerning the decision that they were to make when the vote was taken. While the Act does not prohibit the company from attempting to influence the employees, if such influence can be characterized as undue influence, it would then be contrary to the provisions of section 48 of the Act. There are certain items contained in the letter which the Board finds objectionable. One comment quoted above reads, in part, "they, the Union, are not bound to account publicly for what they do with your money. Do you know what they do with it?" This comment would tend to mislead the employees in view of the provisions of section 63 of the Act which create a duty on the union to provide its members with a copy of the audited financial statement of the affairs of the union. Similarly, the list of benefits which is set out in the letter contains a statement that a generous weekly indemnity plant was being negotiated. This cannot be construed other than as a promise to the employees.

9. Again, the letter also contains the following statement, "We want to grow together, in a harmonious and satisfactory way - with continuous employment and continuous income, week after week, throughout the years." This statement read in the context of an anti-union letter would tend to imply that if the union became the employees' bargaining agent, employment might not be continuous and the employees might not have continuous income week after week throughout the years. While it is recognized that a lawful strike might deprive the employees of such continuous employment or income, this statement might well be interpreted that the employer would not want to grow with the employees in a harmonious and satisfactory way - with continuous employment etc., if the union became the bargaining agent of the employees.

10. As stated above, this letter was intended to influence the decision of the employees. This influence was made all the greater by the fact that the letter was read during working hours when the employees were not required to perform work and was subsequently distributed among the employees. Where letters of this nature or statements made by the employer contain false or misleading information, or where promises are contained in such statements or letters, it must be said that the influence exerted by the employer exceeds the limits of section 48 and becomes undue influence. We therefore find on all the evidence before us and for the reasons set out above that the employer made promises and engaged in undue influence in the circumstances of this case.

11. The nature of the promises and undue influence in this case was not, in our opinion, of such magnitude which would prevent the true wishes of the employees from being disclosed in a subsequent representation vote. The Board therefore is not satisfied that the applicant union is entitled to the relief provided by section 7(5) of the Act. However,

THE BOARD IS OF OPINION THAT A NEW REPRESENTATION VOTE SHOULD BE TAKEN IN THIS CASE SINCE THE BOARD IS NOT SATISFIED THAT THE REPRESENTATION VOTE CONDUCTED ON FEBRUARY 19, 1970 CONSTITUTED A TRUE EXPRESSION OF THE EMPLOYEES' WISHES IN VIEW OF THE PROMISES MADE, AND THE UNDUE INFLUENCE ENGAGED IN, BY THE RESPONDENT IN THIS CASE.

12. THE BOARD THEREFORE DIRECTS THAT A NEW PRE-HEARING REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

> ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, ROUTE SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND ROUTE SUPERVISOR, AND OFFICE STAFF.

13. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ONTHE 27TH DAY OF JANUARY, 1970 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 27TH DAY OF JANUARY, 1970 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

14. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

15. THE MATTER IS REFERRED TO THE REGISTRAR.

17240-69-R: AMALGAMATED CLOTHING WORKERS OF AMERICA, CLC AFL-CIO (APPLICANT) V. PARIS NECKWEAR COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS H.F. IRWIN AND P.J. O'KEEFFE.

APPEARANCES AT THE HEARING: JEFFREY SACK, SAM FOX AND JACK MATRAIA FOR THE APPLICANT; E. HOREMBALA AND S. GANS FOR THE RESPONDENT; PATRICK GRAVELY AND C. JADOO FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: MAY 12, 1970.

. . .

2. IN THIS CASE THE RESPONDENT ALLEGED THAT THE EMPLOYEES REFERRED TO AS HOMEWORKERS SHOULD BE INCLUDED IN THE BARGAINING UNIT. IT MAY VERY WELL BE THAT IN SPECIAL CIRCUMSTANCES HOMEWORKERS MAY BE INCLUDED IN AN "ALL EMPLOYEE" UNIT WHICH THE BOARD FINDS TO BE APPROPRIATE. HOWVER, HAVING REGARD TO THE EVIDENCE AND THE SUBMISSIONS OF THE PARTIES, WE FIND THAT ALL EMPLOYEES OF THE RESPONDENT LOCATED IN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, SUPERVISORS, SALES AND OFFICE STAFF, HOMEWORKERS, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

. . .

4. In these circumstances and in accordance with our usual practice it will not be necessary to hear evidence and submissions with respect to the charges filed by the applicant union.

5. A certificate will issue to the applicant.

17288-69-R: Canadian Transportation Workers Union 197 (Applicant) v. WILSON'S TRUCK LINES LIMITED (Respondent) v. General Truck Drivers' Union, Local 938 (Intervener).

BEFORE: Rory F. Egan, Vice-Chairman and Board Members H.F. Irwin and P.J. O'Keeffe.

APPEARANCES AT THE HEARING: W. Michael Temple, L. J. Labonte and C. Hoadley for the applicant; W.S. Cook and D. Wilson for the respondent; A.E. Golden and W. O'Reilly for the intervener.

DECISION OF THE BOARD: May 20, 1970.

. . .

2. This is an application for certification.

3. During the course of the hearings, the respondent submitted that its operations extended beyond the boundaries of the Province of Ontario and into the United States and therefore constitute an undertaking within the meaning of the exception in section 92(10(a) of the British North America Act 1867. It submitted that, that being so, the Ontario Labour Relations Board was without jurisidiction to entertain the application.

4. The evidence is that approximately 90% of the business of the Company comprises cartage of food products within the Province of Ontario. Some 8% of the business involves haulage of steel. Approximately 2% of the business is devoted to the transportation of forest products, about one half of which is outside the Province of Ontario.

5. With respect to the forest products, the Company operates under an Extra-Provincial Operating Licence issued by the Ontario Department of Transport under the Motor Vehicle Transport Act (Canada 1954) and a permit of the Interstate Commerce Commission of the United States of America. These documents license the respondent to transport paper mill materials and supplied between Espanola, Ontario and Kalamazoo Michigan and between Kalamazoo and Halilton, Ontario. The licences refer to the transfer of goods of specified companies.

6. The evidence is that the respondent has made two trips to Kalamazoo per month from 1964 to 1969. This practice was interrupted by a strike but has now been resumed. The evidence is that there is no written contract between the respondent and the companies named in the licence, but that it carries their products whenever they have loads to be transported.

7. Counsel agreed that the two leading cases in matters such as this are Re Tank Truck Transport Ltd. 25 D.L.R. (2d) 161 affirmed on appeal by the Ontario Court of Appeal 36 D.L.R. (2d) 636 and Regina v. Cooksville Magistrate's Court, ex parte Liquid Cargo Lines Ltd. 46 D.L.R. (2d) 700 in which the first case was followed. The decision in the Liquid Cargo Lines case as summarized in the head note is as follows:

> "An Ontario company, engaged in the business of trucking as a carrier of liquid oil and chemical products, and holding in that connection licences from Ontario, Quebec and the United States, in all of which it carries on its operations, is subject to the Industrial Relations and Disputes Investigation Act, R.S.C. 1952, c. 152, in its labour relations with its employees notwithstanding that all of them are residents of Ontario, that its head office and only terminal is in Ontario and that, on the facts, only 1.6% of its loads are hauled to or from points outside of Ontario, representing only 10% of its total mileage. The company's operations as a whole constitute an undertaking connecting Ontario with another Province and extending beyond the limits of the Province, within s. 53 of the Act (reproducing s. 92(10)(a) of the B.N.A. Act), and it is immaterial that its extra-provincial business is casual and unscheduled when it is clear that it provides extra-provincial service consistently whenever its customers apply for it."

8. We have considered the facts of the instant case in the light of the foregoing decisions. We are of the opinion that the business of the respondent is an "undertaking" within the meaning of the exception insection 92(10)(a) of the B.N.A. Act 1867 and that its labour relations therefore fall entirely outside the jurisdiction of the Ontario Labour Relations Board.

9. The application is accordingly dismissed.

17304-69-R: Canadian Union of Construction Workers (Applicant) v. POLMAR TILE COMPANY (Respondent).

BEFORE: J. H. Brown, Q.C., Alternate Chairman, and Board Members E. Boyer and R. W. Teagle.

DECISION OF THE BOARD: May 20, 1970.

1. No statement of objections and desire to make representations has been filed with the Board within the time fixed under subsection 1 of section 45 of the Board's Rules of Procedure following the taking of the representation vote pursuant to the Board's direction of April 6, 1970, in this matter.

2. Five persons on the revised voters' list were eligible to cast ballots in the representation vote. Of that number only one cast a ballot. In these circumstances, upon the instructions of the Registrar, the ballot box was sealed pending a further direction of the Board.

3. In order to be entitled to certification, more than fifty per cent of the ballots of all those eligible to vote must be cast in favour of the applicant trade union. Since only one of the eligible voters cast a ballot it is obvious that the applicant has not established its entitlement to certification. Accordingly, no useful purpose would be served by counting the sole ballot that was cast. Moreover, to count the one ballot would unnecessarily disclose whether or not the one person concerned desired to be represented by the applicant. The Board accordingly directs that the Registrar cause the ballot box to be opened and the sole ballot cast in the representation vote to be destroyed.

4. On the taking of the representation vote directed by the Board not more than fifty per cent of the ballots of all those eligible to vote were cast in favour of the applicant.

5. The application is therefore dismissed.

6. The Board will not entertain an application for certification by the applicant with respect to any of the employees of the respondent in the bargaining unit within the period of six months from the date hereof.

17645-70-R: Labourers International Union of North America, Local 607 (Applicant) v. COMMONWEALTH CONSTRUCTION CO., LTD. (Respondent) v. Lumber & Sawmill Workers Union, Local 2693 of the United Brotherhood of Carpenters & Joiners of America (Intervener) v. Group of Employees (Objectors).

BEFORE: J. H. Brown, Q.C., Alternate Chairman, and Board Members E. Boyer and R. W. Teagle.

APPEARANCES AT THE HEARING: R. Koskie, G. Allen and C. Schelle for the applicant, no one for the respondent, T. E. Armstrong and C. Ekholm for the intervener, L. Salchert and P. Wood for the objectors.

DECISION OF THE BOARD: May 12, 1970.

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4. The Board further finds that all construction labourers in the employ of the respondent in the District of Rainy River, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

5. The respondent filed a list containing the names of the two persons in its employ as of the date of the making of the application who fall within the above described bargaining unit. The two persons concerned are Lance Salchert and Philip Wood, both of whom are classified as labourers. In support of its application, the applicant submitted evidence of membership on behalf of both Salchert and Wood. The intervener in its intervention also is applying for certification for the same unit of employees that the Board found to be appropriate in paragraph 4. The intervener as well as the applicant submitted evidence of membership in support of its application for the same two persons, namely Salchert and Wood.

6. Salchert and Wood filed a statement of desire expressing opposition to the application of the applicant. In the statement which is signed by both Salchert and Wood, they state that the reason for their opposition to the applicant is that they were misinformed and misled by the representative of the applicant when they were approached to join the applicant. The two employees concerned in their statement expressed their desire to be represented by the intervener.

7. The intervener also filed charges alleging improper and irregular conduct on the part of the applicant in securing the evidence of membership which it submitted in support of the instant application. More particularly, the intervener alleges that on Wednesday, April 15, 1970, at approximately 2:30 p.m. and again at 4:30 p.m., the representative of the applicant, Carl Schelle, told Salchert and Wood that the applicant has a collective agreement with the respondent covering their employment and that in order to maintain their employment they were required, under the terms of that agreement, to join the applicant union. The intervener alleged that for this reason, and this reason alone, the two employees signed application cards with the applicant.

8. Salchert and Wood testified that they were approached by Schelle in the early afternoon of April 15, 1970 while they were working on the New Mill Complex at Fort Frances being built for the Ontario-Minnesota Pulp and Paper Co. Ltd.. Both testified that they had been hired the previous day and were the only two construction labourers working for the respondent on that day and April 16, 1970, the date of the making of the application. The undisputed evidence is that Schelle, after introducing himself, said he wanted to meet them after work to talk about joining the applicant. Salchert and Wood agreed to do so and met with him in Schelle's automobile after work at approximately 4:30 p.m. Wood asked Schelle if the applicant had a collective agreement with the respondent. Schelle answered in the affirmative. Salchert thereupon said that if that was the case he supposed that they had better join the applicant as there was nothing else they could do. Schelle again answered in the affirmative. Salchert and Wood thereupon signed applications for membership in the applicant and paid a five dollar initiation fee to Schelle. The applicant, in fact, did not have a collective agreement with the respondent. Salchert and Wood testified that they would not have joined the applicant had it not been for the misrepresentation of the facts by Schelle. Both testified that they only joined the applicant because they thought the applicant had a collective agreement with the respondent and that they therefore would be obliged to join the applicant.

9. In view of the misrepresentations made by Schelle, which we find were the only reasons Salchert and Wood signed applications for membership in the applicant, we are not prepared to accept the evidence of membership submitted by the applicant.

10. The applicant argued that it was the practice of the intervener to organize on industrial lines, that is "all employee" units, and that in accordance with the Board's past practice, the only appropriate unit to be granted to the intervener would be one which included all of the trades on the job as of the date of the making of the application. The intervener asserts that as of the date of application only construction labourers were employed by the respondent. This assertion is supported by the evidence of Salchert and Wood. The applicant, on the other hand, alleged that there were other trades in the employ of the respondent as of the date of application and requested that the Board appoint an Examiner to inquire into the records of the respondent for the purpose of settling the issue.

11. Based on the inquiries which it has made of the respondent, the Board is satisfied that the respondent, as of the date of the making of the application, had only two construction labourers in its employ. In light of the Board's determination that it is not prepared to accept any of the evidence of membership submitted by the applicant, the applicant has ceased to have any status in this application. Accordingly, in these circumstances, the applicant is not in any position to request the appointment of an Examiner or to participate in

ANY PROCEEDINGS IF AN EXAMINER IS APPOINTED BY THE BOARD RELATING TO THE INSTANT APPLICATION. SINCE THE BOARD IS SATISFIED ON THE BASIS OF THE INFORMATION BEFORE IT THAT THE RESPONDENT ONLY HAD THE TWO NAMED CONSTRUCTION LABOURERS IN ITS EMPLOY AS OF THE DATE OF THE MAKING OF THE APPLICATION, THE BOARD SEES NO REASON TO APPOINT AN EXAMINER TO MAKE ANY FURTHER INQUIRIES.

12. THE APPLICATION AS IT RELATES TO THE APPLICANT IS DISMISSED.

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14. A CERTIFICATE WILL ISSUE TO THE INTERVENER.

17725-70-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. GLEN AGAR I.G.A.(RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: CLIFFORD EVANS FOR THE APPLICANT, B. W. BINNING AND SIDNEY BERMACK FOR THE RESPONDENT, NANCY HORNELL FOR THE OBJECTORS.

DECISION OF THE BOARD: MAY 26, 1970.

1. THIS IS AN APPLICATION FOR CERTIFICATION. A PETITION IN OPPOSITION TO THIS APPLICATION WAS RECEIVED BY THE BOARD ON THE TERMINAL DATE OF THE APPLICATION, HOWEVER, THE PETITION WAS DEFECTIVE IN THAT IT DID NOT INDICATE THE NAME OF THE EMPLOYER OF THE PETITIONERS. THE REGISTRAR OF THE BOARD NOTIFIED THE PETITIONERS OF THIS DEFECT AND SUBSEQUENT TO THE TERMINAL DATE THE PETITIONERS SUPPLIED THE NECESSARY INFORMATION CONCERNING THE NAME AND ADDRESS OF THEIR EMPLOYER.

AT THE HEARING IN THIS MATTER, THE APPLICANT OBJECTED TO THE BOARD ENTERTAINING THE PETITION ON THE GROUNDS THAT THE REQUIREMENTS OF SECTION 48(1)(A)(II) OF THE BOARD'S RULES OF PROCEDURE HAD NOT BEEN MET ON OR BEFORE THE TERMINAL DATE OF THIS APPLICATION. IT WAS THE APPLICANT'S POSITION THAT FORM 5, NOTICE OF EMPLOYEES OF APPLICATION FOR CERTIFICATION AND OF HEARING, CLEARLY STIPULATED THAT INFORMATION CONCERNING THE NAME OF THE EMPLOYER MUST BE SUPPLIES NOT LATER THAN THE TERMINAL DATE OF THIS APPLICATION.

3. SINCE THE DOCUMENT WHICH BEARS THE SIGNATURES OF THE OBJECTING EMPLOYEES WAS IN THE HANDS OF THE BOARD ON THE TERMINAL DATE AND SINCE THE DOCUMENT WHICH BORE THEIR SIGNATURES ON ITS FACE EVIDENCED THE REASON FOR THEIR SIGNING THE DOCUMENT, THE ABSENCE OF THE EMPLOYER'S

ADDRESS WAS A TECHNICAL DEFECT. THE NAME AND ADDRESS OF THE EMPLOYER IS NECESSARY IN ORDER THAT THE BOARD BE ABLE TO PROCESS THE PETITION WITH RESPECT TO THE PROPER CERTIFICATION APPLICATION. HOWEVER, THE EXISTENCE OF THE TECHNICAL IRREGULARITY IN NO WAY COULD AFFECT THE WISHES OF THE EMPLOYEES AS EVIDENCED ON THE FACE OF THE DOCUMENT SIGNED BY THEM. ACCORDINGLY, PURSUANT TO THE PROVISIONS OF SECTIONS 57 AND 59 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD DEEMS IT ADVISABLE TO ENLARGE THE TIME PRESCRIBED BY THE BOARD'S RULES FOR SUPPLYING THE NAME OF THE EMPLOYER BY THE PETITIONERS IN THIS MATTER. THE BOARD THEREFORE FINDS THAT THE PETITION FILED ON THE TERMINAL DATE, WHICH CONTAINED THE IRREGULARITY NOTED ABOVE, IS A TIMELY PETITION.

4. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING TO INQUIRE INTO THE PETITION FILED IN OPPOSITION TO THIS APPLICATION AND THE CHARGES MADE BY THE APPLICANT WITH RESPECT THERETO AND ALL OUTSTANDING ISSUES.

17734-70-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO-CLC; LOCAL UNION 269 (APPLICANT) v. S. ANGLIN CO. LIMITED (RESPONDENT) v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, AND ITS LOCAL 522 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: CHARLES GEE FOR THE APPLICANT, D. G. CUNNINGHAM FOR THE RESPONDENT, R. RUSSELL AND D. TYNER FOR THE INTERVENER.

DECISION OF THE BOARD: MAY 27, 1970.

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2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT OF A UNIT OF OIL BURNER SERVICE MECHANICS IN THE EMPLOY OF THE RESPONDENT AT KINGSTON.

3. THE RESPONDENT AND THE INTERVENER HAVE BEEN PARTIES TO A SERIES OF COLLECTIVE AGREEMENTS FOR MORE THAN FIFTEEN YEARS AND ARE CURRENTLY NEGOTIATING FOR THE RENEWAL OF THE MOST RECENT AGREEMENT WHICH EXPIRED ON MARCH 31, 1970. THE COLLECTIVE AGREEMENT COVERES EMPLOYEES IN THE RESPONDENT'S HEATING AND FUEL DEPARTMENTS AND THE RESPONDENT$ GARAGE. THE CLASSIFICATIONS OF EMPLOYEES COVERED BY THE SCOPE CLAUSE OF THE AGREEMENT INCLUDE TRUCK DRIVERS, LABOURERS, GARAGE MECHANICS, TO NAME BUT A FEW, AS WELL AS OIL BURNER MECHANICS. A TOTAL OF APPROXIMATELY FORTY EMPLOYEES ARE IN THE BARGAINING UNIT REPRESENTED BY THE INTERVENER.

4. The applicant is seeking to carve out of the existing bargaining unit the oil burner service mechanics. The evidence is that the intervener has always represented this classification in collective bargaining. Indeed, an employee of the respondent classified as an oil burner mechanic was a signatory to the most recent collective agreement with the respondent. Moreover, an oil burner mechanic is on the intervener union's current negotiating committee. As well, the Appendix to the last agreement which sets out the wage rates for the different occupational classifications in the bargaining unit, has wage rates for three classes of oil burner mechanics. On the basis of the above evidence, there can be no suggestion that the intervener has not adequately represented the interests of the oil burner mechanics in its collective bargaining relationship with the respondent.

5. The Board in the past has only allowed an applicant trade union to carve a craft group out of an "all employee" or larger unit where there is evidence which satisfies the Board that the incumbent trade union, which holds the bargaining rights for the overall unit, has not represented the craft group or has neglected them in relation to other classifications of employees in the bargaining unit (see Syndicat d'Oeuvres Sociales, Limitee Case, OLRB M.R. Jan. 1966, p. 747). In the instant case, it is clear from the evidence that the above prerequisite conditions do not exist. In any event, the Board has never recognized oil burner service mechanics as being a craft group within the meaning of section 6(2) of the Act. Rather, the Board has found such a unit of employees to be appropriate under section 6(1) of the Act (see Automatic Fuels Limited Case, OLRB M.R. April 1968, p. 22). For this reason also, the Board sees no reason to separate the oil burner service mechanics from the other employees in the existing unit. The Board therefore finds that the unit applied for by the applicant in the instant case is not appropriate for collective bargaining.

6. The application accordingly is dismissed.

Indexed Endorsements - Termination

17636-70-R: William Parks and Harry Batty (Applicants) v. Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 880 (Respondent) v. Island of Bob-Lo Company (Intervener).

BEFORE: J. D. O'Shea, Q.C., Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C..

APPEARANCES AT THE HEARING: David I. McWilliams, Q.C., and William J. Parks for the applicants, W. W. Tiller for the respondent, Milton H. Grant for the intervener.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: May 26, 1970.

1. The applicants applied on April 15, 1970 under section 43 of The Labour Relations Act for a declaration terminating the bargaining rights of the respondent union.

2. Having regard to all the evidence and the representations made to the Board, the Board is satisfied on the basis of all the evidence before it that not less than fifty per cent of the employees of the Island of Bob-Lo Company in the bargaining unit, at the time the application was made, had voluntarily signified in writing that they no longer wish to be represented by the respondent union on April 24, 1970, the terminal date fixed for this application and the date which the Board determines, under section 77(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining the number of persons who have voluntarily signified in writing that they no longer wish to be represented by the respondent union under section 43(3) of the said Act.

3. The Board directs that a representation vote be taken of the employees of the Island of Bob-Lo Company. Those eligible to vote are all employees of the Island of Bob-Lo Company on the Island of Bob-Lo in the maintenance department and in the park crew, save and except foremen, persons above the rank of foreman, and office staff on the date the vote is taken.

4. Voters will be asked to indicate whether or not they wish to bargain collectively through the respondent.

5. At the time the application was made, there were two employees in the bargaining unit and both signed the petition in support of the application.

6. The intervener company operates an amusement or recreation park during the summer months. It was acknowledged at the hearing that about thirteen persons will be employed when the park in in operation. The park will open for business on the Victoria Day holiday weekend during the latter part of May. The intervener by letter dated May 4, 1970 advises the Board that two additional employees had been recalled to work on April 27, 1970.

7. The respondent union argued that the Board should direct that a representation vote be taken at a time when the park is in operation and a full complement of employees are employed. It was the union's position that the circumstances outlined above clearly establish that a build-up of employees is imminent and any representation vote directed by the Board should be postponed until the park is in operation.

8. The applicant argued that any additional employees recalled or hired by the company were only seasonal employees and they therefore did not share the same interests as the applicants who were the full-time employees of the company.

9. It is clear from the undisputed facts outlined above that the intervener is in the process of building up the bargaining unit to its usual complement and that such build-up will be substantially completed or or about June 1st when the park will be in operation. In these circumstances, we are of opinion that the Board should apply its build-up principle and delay the taking of the representation vote in this matter until a representative number of employees are employed in the bargaining unit. Since the build-up is presently underway and will be substantially completed on or about June 1st, the Board directs the Registrar to cause the representation vote directed in this matter to be taken subsequent to that date.

10. The matter is referred to the Registrar.

11. Board Member J.E.C. Robinson, Q.C., dissents with reasons to follow.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: May 26, 1970.

I dissent with respect to the decision of the majority dated May 15, 1970, in this matter. In my respectful opinion this is not an instance where the Board should apply its "build-up" principles.

It had hitherto been my opinion that the principle of build-up was applicable only in the situation of new enterprises. The majority, however, have indicated that this is not the case and it would now seem from their decision that in any situation where the complement of employees will be substantially increased, the principle of build-up will prevail.

THIS, OF COURSE, SHOULD APPLY ALSO TO APPLICATIONS FOR CERTIFICATION.

THUS, IN AN APPLICATION FOR CERTIFICATION, IF AN EMPLOYER SUBMITS THAT WITHIN A REASONABLE PERIOD HIS COMPLEMENT OF EMPLOYEES WILL BE SUBSTANTIALLY INCREASED, EITHER BY THE HIRING OF NEW FULL-TIME EMPLOYEES OR BY THE HIRING OF SEASONAL EMPLOYEES, IT WOULD FOLLOW THAT THE BOARD SHOULD NOT CERTIFY IMMEDIATELY, BUT SHOULD WAIT UNTIL A REPRESENTATIVE NUMBER OF EMPLOYEES ARE EMPLOYED IN THE BARGAINING UNIT, AT WHICH TIME THE BOARD SHOULD CONDUCT A REPRESENTATION VOTE.

IN THE INSTANT CASE, HOWEVER, THERE WAS ABSOLUTELY NO EVIDENCE PRESENTED BY ANY OF THE PARTIES AT THE HEARING THAT THERE WERE ANY ADDITIONAL EMPLOYEES BEING TAKEN INTO THE BARGAINING UNIT. AS INDICATED BY THE MAJORITY, HOWEVER, THE COMPANY BY LETTER DATED MAY 4TH, 1970, ADVISED THAT TWO ADDITIONAL EMPLOYEES, LISTED ON SCHEDULE "C" OF ITS REPLY, WERE RECALLED TO WORK ON MONDAY, APRIL 27TH, 1970. OTHER THAN THAT, IT WAS ONLY WHEN ALL PARTIES HAD CLOSED THEIR CASE THAT THE UNION MADE REFERENCE IN ITS ARGUMENT TO A LETTER WHICH INDICATED THAT SEASONAL EMPLOYEES WOULD BE HIRED IN APPROXIMATELY ONE AND ONE-HALF MONTHS' TIME.

THE RECOGNITION CLAUSE OF THE COLLECTIVE AGREEMENT RECOGNIZES THE RESPONDENT AS THE EXCLUSIVE BARGAINING AGENT FOR ALL EMPLOYEES OF THE COMPANY ON THE ISLAND OF BOB-LO IN THE MAINTENANCE DEPARTMENT AND IN THE PARK CREW, WITH CERTAIN EXCEPTIONS. IT WOULD SEEM TO ME THAT HAVING REGARD TO WHEN THE APPLICATION WAS MADE AND WHEN THE MATTER WAS HEARD BY THIS BOARD, THE BOARD SHOULD HAVE ORDERED AN IMMEDIATE VOTE.

IT IS ALSO INTERESTING TO NOTE THAT IN THE COLLECTIVE AGREEMENT, IT IS SPELLED OUT THAT "IN SEASON" EMPLOYMENT COMMENCES MAY 1ST OF EACH YEAR AND CONTINUES TO AND INCLUDING SEPTEMBER 30TH OF THE SAME YEAR. THAT BEING SO, WHILE THE APPLICATION FOR TERMINATION OF BARGAINING RIGHTS WAS FILED ON APRIL 15TH, 1970, THE MATTER WAS HEARD BY THE BOARD ON MAY 6TH, 1970 AND THE DECISION OF THE MAJORITY WAS RENDERED ON MAY 15TH, 1970. THUS, AT THE HEARING BY THE BOARD AND AT THE TIME OF THE RENDERING OF THE DECISION BY THE MAJORITY, THE COMPANY WAS IN ITS "IN SEASON", AS CONTEMPLATED BY THE COLLECTIVE AGREEMENT.

17710-70-R: MRS. FRANCES ORR (APPLICANT) V. RESTAURANT CAFETERIA & TAVERN EMPLOYEES UNION LOCAL 254 (RESPONDENT). (RE: SERVICO LIMITED).

- AND

17711-70-R: MISS CAROL SNELL (APPLICANT) V. RESTAURANT CAFETERIA & TAVERN EMPLOYEES UNION LOCAL 254 (RESPONDENT). (RE: SERVICO LIMITED).

- AND -

17712-70-R: MR. CHARLES A. HALLIDAY (APPLICANT) V. RESTAURANT CAFETERIA & TAVERN EMPLOYEES UNION LOCAL 254 (RESPONDENT). (RE: SERVICO LIMITED).

- AND -

17713-70-R: MRS. EVELYN CROWE (APPLICANT) V. RESTAURANT CAFETERIA & TAVERN EMPLOYEES UNION LOCAL 254 (RESPONDENT). (RE: SERVICO LIMITED).

- AND -

17714-70-R: Mrs. Evelyn Foley (Applicant) v. Restaurant Cafeteria & Tavern Employees Union Local 254 (Respondent). (Re: Servico Limited).

BEFORE: J. D. O'Shea, Q.C., Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C..
APPEARANCES AT THE HEARING: Mrs. Frances Orr, Mrs. Diane Henaut, Charles A.Halliday, Mrs. Evelyn Crowe and Evelyn D. M. Foley for the applicants, Wm. Kitching and V. Piliotis for the respondent, R. A. Ramsay for Servico Limited, A. Kufner for Wayfare Restaurant.

DECISION OF THE BOARD: May 27, 1970.

1. These are applications for a declaration terminating th bargaining rights of the respondent.

2. At the hearing in these matters, the respondent alleged that the applications herein are untimely. The facts of this case may be summarized as follows. The respondent union was certified as bargaining agent for certain employees of Horne's Restaurant Limited on November 16, 1966. A collective agreement was entered into between the respondent union and Horne's Restaurant Limited on the 1st of June, 1968 which was to remain in effect until May 31, 1970. During the term of operation of that collective agreement, the respondent union was advised that, effective April 30, 1969, the ownership of Horne's Restaurant Limited was transferred to Senroh Inc.. The name of Senroh Inc. was subsequently changed to Horne's Internationa, Inc.. The sale from Horne's Restaurant Limited to Horne's Internationa, Inc. was the sale of a business within the meaning of section 47a of The Labour Relations Act and apparently Horne's International, Inc. and the union agreed to be bound by a like agreement to that which had bound Horne's Restaurant Limited and the union.

3. The instant applications were made on behalf of the employees who described themselves as being employed by Wayfare Restaurants Ltd. (previously known as Horne's Restaurants). The name Wayfare Restaurant is a trading style of Gulf Oil Canada Limited. For the purpose of protecting the name Wayfare Restaurant, Gulf Oil Canada Limited caused a corporate entity to be formed known as Wayfare Restaurants Limited. While the restaurant in which the employees with whom we are here concerned are employed is known as Wayfare Restaurant, the correct name of the employer of these employees is Servico Limited which is also a wholly owned subsidiary of Gulf Oil Canada Limited.

4. Horne's Restaurant Limited had operated the restaurant with which we are here concerned under a lease with Gulf Oil Canada Limited. This lease and its renewal expired on March 30, 1970. From and after March 31, 1970, Servico Limited operated the restaurant under the trading style of Wayfare Restaurant and Servico Limited has been the employer of the employees with whom we are here concerned since March 31, 1970.

THE PARTIES THEREFORE AGREED THAT SERVICO LIMITED IS THE SUCCESSOR EMPLOYER OF NORNE'S INTERNATIONAL, INC. WHICH WAS IN TURN THE SUCCESSOR EMPLOYER OF HORNE'S RESTAURANT LIMITED WITH RESPECT TO WHOSE EMPLOYEES THE RESPONDENT UNION HAD BEEN CERTIFIED AS BARGAINING AGENT. IT WAS AGREED THAT PURSUANT TO THE PROVISIONS OF SECTION 47A, THE UNION WAS ENTITLED TO SERVE A NOTICE TO BARGAIN AFTER MARCH 31, 1970, THE DATE SERVICO LIMITED BECAME THE SUCCESSOR EMPLOYER IN THIS MATTER.

5. ON MARCH 9, 1970, THE FOLLOWING LETTER WAS WRITTEN TO THE UNION ON BEHALF OF THE EMPLOYER:

> DEAR SIR:-
>
> I WISH TO INFORM YOU OF A CHANGE IN THE MANAGEMENT IN TRENTON OF HORNE'S RESTAURANT, TO BE KNOWN AS WAYFARE RESTAURANT. THE EFFECTIVE DATE WILL BE MARCH 30, 1970.
>
> YOUR CONTACT IN WAYFARE RESTAURANT LTD. WILL BE THE UNDERSIGNED. PLEASE SEND ALL CORRESPONDENCE TO:
>
> MR. L. VANDEMARK,
> RESTAURANT SUPERVISOR,
> BOX 393,
> PORT PERRY, ONTARIO.
>
> YOURS TRULY,

6. ON APRIL 6, 1970, THE UNION WROTE THE FOLLOWING LETTER TO MR. VANDEMARK:

> DEAR MR. VANDEMARK:
>
> RE: WAYFARE RESTAURANTS LTD., (PREVIOUSLY KNOWN AS HORNE'S RESTAURANTS) LOCATED AT HWY #401, NEAR TRENTON. RENEWAL OF THE AGREEMENT.
>
> IN ACCORDANCE WITH ARTICLE XII - DURATION OF THE AGREEMENT, OF THE COLLECTIVE AGREEMENT BETWEEN THIS UNION AND WAYFARE RESTAURANTS LTD. (PREVIOUSLY KNOWN AS HORNE'S RESTAURANTS LTD.)., WE WISH TO ADVISE YOU OF OUR DESIRE TO RENEWAL OF THE AGREEMENTS WITH AMENDMENTS.
>
> THE AGREEMENT CALLS FOR NOTICE TO BE GIVEN NOT MORE THAN SIXTY (60) DAYS PRIOR TO MAY 31ST 1970.
>
> MAY WE RESPECTFULLY REQUEST A MEETING WITH YOU IN ORDER TO COMMENCE NEGOTIATIONS FOR A NEW AGREEMENT.
>
> YOURS TRULY

7. On April 9, 1970, Servico Limited replied to the union's letter of April 6th and agreed to meet with the union on April 29, 1970. The instant applications were made on April 27, 1970.

8. The issue of timeliness in these matters must be resolved by determining whether the union's letter of April 6, 1970 was a notice to bargain given by the respondent union under subsection (2) of section 47a of the Act. If the letter of April 6, 1970 was a notice given under section 47a(2) of the Act, the instant applications are untimely pursuant to the provisions of section 47a(9) of the Act. If, on the other hand, the notice given on April 6, 1970 was not given pursuant to the provisions of section 47(a)(2) of the Act, the instant applications are timely.

9. At the hearing in these matters, the union acknowledged that at the time it wrote the letter of April 6, 1970, it had no knowledge of the relationship of Servico Limited and the employees. Although it was advised that there had been a change in management on March 9th, the union served a notice to bargain pursuant to the provisions of the collective agreement which had been entered into between the union and Horne's Restaurant Limited and was subsequently adopted by Horne's International, Inc.. It is readily apparent from the statements made at the hearing in these matters and from the content of the letter of April 6, 1970 that the union attempted to bargain for a renewal of the collective agreement to which it was a party pursuant to the provisions of that agreement. It is equally apparent that the notice to bargain given on April 6, 1970 made no reference to section 47a, either directly or indirectly, and was accordingly not given pursuant to the provisions of section 47a(2). We must accordingly find that the applications herein are timely.

10. Having regard to all the evidence and the representations made to the Board, the Board is satisfied on the basis of all the evidence before it that not less than fifty per cent of the employees of Servico Limited in the bargaining unit, at the time the application was made, have voluntarily signified in writing that they no longer wish to be represented by the respondent union on May 8, 1970, the terminal date fixed for these applications and the date which the Board determines, under section 77(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining the number of persons who have voluntarily signified in writing that they no longer wish to be represented by the respondent union under section 43(3) of the said Act.

11. The Board directs that a representation vote be taken of the employees of Servico Limited. Those eligible to vote are all employees of Servico Limited in Murray Township, save and except assistant manager, persons above the rank of assistant manager, office and sales staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken.

12. Voters will be asked to indicate whether or not they wish to bargain collectively through the respondent.

13. These matters are referred to the Registrar.

INDEXED ENDORSEMENT - SUCCESSOR STATUS

17475-69-R: International Chemical Workers Union, Local 798 (Applicant) v. International Chemical Workers Union, Local 741 (Respondent) v. UNION GAS COMPANY OF CANADA, LIMITED (Employer).

BEFORE: J. H. Brown, Q.C., Alternate Chairman, and Board Members A. Main and F. W. Murray.

APPEARANCES AT THE HEARING: Kenneth Rogers for the applicant, no one for the respondent, R. C. Filion, G. I. Wonnacott and M. Ternovan for the employer.

DECISION OF THE BOARD: May 18, 1970.

1. This is an application made under section 47 of The Labour Relation Act for a declaration that the applicant (hereinafter referred to as Local 798) has acquired the rights, privileges and duties of its predecessor (hereinafter referred to as Local 741) by reason of a merger, amalgamation or a transfer of jurisdiction.

2. The International Chemical Workers Union was certified by a certificate of this Board dated November 12, 1968 for a unit of office and clerical employees of Union Gas Company of Canada, Limited (hereinafter referred to as Union Gas) at London. Local 798 apparently holds the bargaining rights for a unit of production employees of Union Gas also at London. Local 741 and Union Gas were parties to a collective agreement dated March 15, 1966 which was effective until October 14, 1967, covering office and clerical employees of Union Gas in the Simcoe Division of the Central Region, and those employees in the Brantford Division of the Eastern Region, located in Branch offices in Caledonia, Dunnville, and Selkirk for a further year until October 15, 1968. As well, Local 741 and Union Gas were parties to a collective agreement dated April 24, 1967, effective until September 30, 1968, covering office and clerical employees of Union Gas in its Chatham Division and Chathem Meter Shop Division. This agreement was renewed for a further year until October 1, 1969. Union Gas entered into a Memorandum of Agreement dated July 28, 1969 with the Oil, Chemical & Atomic Workers' International Union Local 9-769 and Local 741 setting forth a basis of settlement for renewed collective agreements.

3. With respect to the unit of office and clerical employees of Union Gas at London, the Memorandum of Agreement provides that a new agreement covering those employees will be effective from November 1,

1968 to December 31, 1970. This unit would appear to be that for which the International Chemical Workers Union was certified on November 12, 1968. (We note that the certificate of the Board was granted to the parent international union. The Memorandum, however, would seem to indicate that Local 741 is the bargaining agent for the employees in the unit.) The Memorandum further provides that a new agreement covering the Simcoe unit of Union Gas represented by Local 741 is to be effective from October 15, 1968 to December 31, 1970. The Memorandum provides as well that a new agreement covering the Chatham Division of Union Gas represented by Local 741 is to be effective from October 1, 1968 to December 31, 1970. In addition, the Memorandum provides for a new agreement between Local 9-769 of the Oil, Chemical & Atomic Workers' International Union and Union Gas covering an unspecified unit of employees. The Memorandum of Agreement sets out terms and conditions of employment which are to be included in the new collective agreements. At the time the instant application was made, none of the above proposed agreements had been entered into by the parties.

4. The evidence of Kenneth Rogers, a representative of the International Chemical Workers Union, is that meetings were held in each of the locations where Local 741 held bargaining rights for employees of Union Gas, namely, London, Chatham and Brantford. Employees working in the branch offices of the Brantford Division located in Caledonia, Dunnville and Selkirk were notified and attended a meeting in Brantford. According to Rogers, the notices of the meeting were posted on bulletin boards on the company's premises where they would come to the attention of the employees concerned. These meetings were, in fact, regular monthly meetings of Local 741. At the meetings, which were held early inSeptember of 1969, the proposed merger of Locals 741 and 798 was placed before those in attendance. By letters dated September 16, 1970, Rogers sent ballots and envelopes needed to conduct the vote on the merger to the unit chairman for each of the three units. The unit chairmen were instructed to distribute the ballots and envelopes to the employees concerned as quickly as possible. In his letter, Rogers stated that the ballots were to be returned no later than September 24, 1969. The unit chairmen were further advised by Rogers that the ballots would be opened and counted at the Labour Hall in London on September 25, 1969.

5. Although he had no personal knowledge, Rogers testified that he assumed that the unit chairmen followed his instructions and circulated the ballots to the employees concerned and that the employees who were entitled to participate in the vote mailed their ballots directly to Rogers at the office of the International Chemical Workers Union in London. According to Rogers, 79 ballots were mailed to him and of that number 72 favoured the merger of Local 741 with Local 798 of the International Chemical Workers Union so as to create a single local union covering the London office, Chatham office, Simcoe office and the London production employees. Seven of the ballots were cast against the merger.

6. Before making a declaration under section 47, an applicant is required to produce evidence which satisfies the Board that a majority of the members of the predecessor trade union in the bargaining unit or units concerned have signified their approval of the transfer of jurisdiction, amalgamation or merger, as the case may be. In the instant case, the Board has no evidence before it upon which it is able to place reliance as to the circulation of the ballots and, of much greater importance, who cast the ballots that were mailed to Rogers. Accordingly, on the evidence before it, the Board is not prepared to make a finding that a majority of the members of the predecessor trade union in the bargaining units concerned have indicated their approval of the merger of Local 741 and Local 798. Since the applicant has failed to meet the Board's requirements, the application is dismissed.

7. We would mention that the evidence would indicate that Local 798 holds the bargaining rights for a unit of production employees of Union Gas at London who would appear to be affected by the merger. Further, on the face of the record, it would seem that the parent international union rather than Local 741 holds the bargaining rights for the unit of office employees of Union Gas at London. If this situation is, in fact, the case, it raises a question in our minds as to whether the applicant has taken all the necessary steps with respect to these two units to effect the merger. In view, however, of the dismissal of the application, for the reasons given in the above paragraph, it is not necessary for the Board to deal with this issue.

INDEXED ENDORSEMENTS - PROSECUTION

17200-69-U: WATTS AND HENDERSON LIMITED (Applicant) v. Clarence Howard and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Local Union 46 (Respondent).

BEFORE: O. B. Shime, Vice-Chairman, and Board Members D.B. Archer and F.W.Murray.

APPEARANCES AT THE HEARING: F.R. von Veh and Gil Henderson for the applicant; L.C. Arnold and C. Howard for the respondent.

DECISION OF THE BOARD: May 7, 1970.

. . .

2. This is an application for consent to prosecute the union and one of its officers pursuant to section 74 of The Labour Relations Act. The applicant has subpoenaed the officer, Mr. Clarence Howard to testify on its behalf. Presumably the testimony will concern both Mr. Howard as a respondent in his individaul capacity and the union. Counsel for the respondent submits that Mr. Howard is not a competent or compellable

WITNESS FOR THE PURPOSE OF TESTIFYING AGAINST HIMSELF OR AGAINST THE UNION. ESSENTIALLY HE ARGUES THAT EVIDENCE BY MR. HOWARD WOULD VIOLATE THE PRINCIPLE OF SELF-INCRIMINATION.

3. COUNSEL FOR THE APPLICANT COMPANY SUBMITS THAT APPLICATION FOR CONSENT TO PROSECUTE IS NOT SUBJECT TO THE PROVISIONS OF THE CANADA EVIDENCE ACT WHICH PROTECTS WITNESSES WHO TESTIFY AND FURTHER THAT THE APPLICATION IS GOVERNED BY THE PROVISIONS OF THE ONTARIO EVIDENCE ACT CONCERNING CIVIL MATTERS.

4. NOTWITHSTANDING THAT, THIS BOARD HAS RECOGNIZED THAT MATTERS OF THIS SORT WILL PROCEED TO PENAL PROCEEDINGS, AN APPLICATION FOR CONSENT TO PROSECUTE IS A CIVIL MATTER. THE BOARD IS THEREFORE GOVERNED BY THE ONTARIO EVIDENCE ACT WHICH PROVIDES AS FOLLOWS:

> 1. IN THIS ACT,
>
> (A) "ACTION" INCLUDES AN ISSUE, MATTER, ARBITRATION, REFERENCE, INVESTIGATION, INQUIRY, A PROSECUTION FOR AN OFFENCE COMMITTED AGAINST A STATUTE OF ONTARIO OR AGAINST A BY-LAW OR REGULATION MADE UNDER ANY SUCH STATUTE AND ANY OTHER PROCEEDING AUTHORIZED OR PERMITTED TO BE TRIED, HEARD, HAD OR TAKEN BY OR BEFORE A COURT UNDER THE LAW OF ONTARIO;
>
> (B) "COURT" INCLUDES A JUDGE, ARBITRATOR, UMPIRE, COMMISSIONER, MAGISTRATE, JUSTICE OF THE PEACE OR OTHER OFFICER OR PERSON HAVING BY LAW OR BY CONSENT OF PARTIES AUTHORITY TO HEAR, RECEIVE AND EXAMINE EVIDENCE.
>
> 7. THE PARTIES TO AN ACTION AND THE PERSONS ON WHOSE BEHALF IT IS BROUGHT, INSTITUTED, OPPOSED OR DEFENDED ARE, EXCEPT AS HEREINAFTER OTHERWISE PROVIDED, COMPETENT AND COMPELLABLE TO GIVE EVIDENCE ON BEHALF OF THEMSELVES OR OF ANY OF THE PARTIES, AND THE HUSBANDS AND WIVES OF SUCH PARTIES AND PERSONS ARE, EXCEPT AS HEREINAFTER OTHERWISE PROVIDED, COMPETENT AND COMPELLABLE TO GIVE EVIDENCE ON BEHALF OF ANY OF THE PARTIES.
>
> 9.-(1) A WITNESS SHALL NOT BE EXCUSED FROM ANSWERING ANY QUESTION UPON THE GROUND THAT THE ANSWER MAY TEND TO CRIMINATE HIM OR MAY TEND TO ESTABLISH HIS LIABILITY TO A CIVIL PROCEEDING AT THE INSTANCE OF THE CROWN OR OF ANY PERSON OR TO A PROSECUTION UNDER ANY ACT OF THE LEGISLATURE.

> (2) If, with respect to a question, a witness objects to answer upon any of the grounds mentioned in subsection 1 and if, but for this section or any Act of the Parliament of Canada, he would therefore be excused from answering such question, then, although he is by reason of this section or by reason of any Act of the Parliament of Canada compelled to answer, the answer so given shall not be used or receivable in evidence against him in any civil proceeding or in any proceeding under any Act of the Legislature.

We are satisfied that an application for consent to prosecute is an action pursuant to section 1(a) of the Evidence Act. Since the Board has power to administer oaths pursuant to The Labour Relations Act, section 77(2)(b), the Board falls within the defination of court under section 1(b) of the Evidence Act.

5. Since Mr. Howard is a party to the action then pursuant section 7 of the Evidence Act he is competent and compellable to give evidence on behalf of the applicant who is also a party pursuant to section 7.

6. Bearing inmind that a prosecution pursuant to The Labour Relations Act is a prosecution under an act of the Legislature, any protection that may be afforded to the respondent is removed by section 9 of the Evidence Act which does not excuse the witness from answering a question that may tend to criminate him or may tend to establish his liability to a prosecution under any Act of the Legislature.

7. If authority be required as to our conclusion in this case it may be found in Regina v Greenspoon Bros. Ltd. 1967 2 OR 119 where Stark J. reviewed the provisions of the Ontario Evidence Act and concluded at p. 123:

> "It is my view that the common law rule has been clearly abrogated by the Ontario Evidence Act in so far as offences under provincial statutes are concerned".

8. Since this issue was raised as a preliminary matter to the Board proceeding and prior to any evidence being heard these reasons are not concerned with the Board's power pursuant to section 77(2)(c) to accept such oral or written evidence as it in its discretion deems proper whether admissible in a court of law or not.

9. The Registrar is directed to list this matter for hearing to hear evidence and representations with respect to all outstanding issues.

17581-70-U: COOPER CONSTRUCTION COMPANY (EASTERN) LTD. (APPLICANT) v. THOMAS FENWISK AND LOCAL UNION 18, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: F. R. VON VEH, F. B. REAUME AND H. KEIGHLEY FOR THE APPLICANT; THOMAS FENWICK AND STANLEY SIMPSON FOR THE RESPONDENTS.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER F. W. MURRAY: MAY 15, 1970.

1. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THOMAS FENWICK FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

> THAT THE SAID THOMAS FENWICK COMMENCING ON THE 30TH DAY OF MARCH, 1970 AND THEREAFTER DID COUNSEL, PROCURE, SUPPORT OR ENCOURAGE AN UNLAWFUL STRIKE CONTRARY TO THE PROVISIONS OF SECTION 54 OF THE LABOUR RELATIONS ACT.

2. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST LOCAL UNION 18, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

> THAT THE SAID LOCAL UNION 18, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA COMMENCING ON OR ABOUT MARCH 30TH, 1970, DID CALL OR AUTHORIZE AN UNLAWFUL STRIKE CONTRARY TO THE PROVISIONS OF SECTION 54 OF THE LABOUR RELATIONS ACT.

3. THE APPROPRIATE DOCUMENTS WILL ISSUE.

4. THE MAJORITY OF THE BOARD HAS HAD AN OPPORTUNITY TO READ THE OPINION OF BOARD MEMBER D. B. ARCHER. WE WOULD SIMPLY POINT OUT THAT IT IS OUR UNDERSTANDING THAT THE RULE TO WHICH BOARD MEMBER ARCHER ALLUDES IS ONE HAVING TO DO WITH APPLICATIONS FOR DECLARATIONS THAT A STRIKE IS UNLAWFUL AND NOT TO APPLICATIONS OF THE PRESENT KIND.

DECISION OF BOARD MEMBER D. B. ARCHER: MAY 15, 1970.

1. THERE IS A GENUINE DIFFERENCE OF OPINION AS TO THE PROPER INTERPRETATION OF A CLAUSE IN THE AGREEMENT THAT LET TO A SHORT WORK STOPPAGE. IT IS INTERESTING TO NOTE THAT THE JOB SUPERINTENDENT IN REPLY TO A QUESTION FROM THE WORKMEN AS TO WHAT THEY SHOULD DO SAID "YOU CAN STAY ON THE JOB SITE OR YOU CAN GO JUST AS YOU WISH". ALL CARPENTERS

ARE BACK ON THE JOB. ONE WAS OFF FOR ONE MORNING, THE OTHER THREE RETURNED ON THE FOLLOWING DAY AT NOON. THE DISPUTE IS NOW GOING THROUGH THE PROPER GRIEVANCE PROCEDURE WHICH WILL LEAD TO A FINAL AND BINDING SETTLEMENT. IN THESE CIRCUMSTANCES I BELIEVE THE BOARD SHOULD EXERCISE ITS DISCRETION. NO USEFUL PURPOSE WILL BE SERVED BY GIVING LEAVE TO PROSECUTE. I THEREFORE WOULD REFUSE LEAVE TO PROSECUTE.

2. THE BOARD HAS A RULE THAT WHERE THE STRIKE IS SETTLED THE APPLICANT MUST PROVE THAT THERE IS A LIKELIHOOD OF A RECURRENCE.

INDEXED ENDORSEMENTS - JURISDICTIONAL DISPUTES

17338(A)-69-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (COMPLAINANT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721, BEER PRECAST CONCRETE LIMITED AND E.G.M. CAPE & COMPANY LTD. (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: RAYMOND KOSKIE AND RAYMOND FORD FOR THE COMPLAINANT, PAMELA A. SIGURDSON AND ALLAN MACISAAC FOR IRONWORKERS LOCAL UNION 721, WILLIAM A. WHITE FOR BEER PRECAST, F. R. VON VEH, B. W. BINNING AND J. W. MCNAUGHTON FOR E.G.M. CAPE.

DECISION OF THE BOARD: MAY 6, 1970.

1. THE INSTANT COMPLAINT WAS LISTED FOR HEARING ON APRIL 27, 1970 FOR THE PURPOSE OF ALLOWING THE PARTIES TO ADDUCE EVIDENCE AND MAKE REPRESENTATIONS WITH RESPECT TO THE MERITS OF THE WORK ASSIGNMENT DISPUTE SET FORTH IN THE COMPLAINT OF THE COMPLAINANT (HEREINAFTER REFERRED TO AS THE LABOURERS).

2. AT THE OUTSET OF THE HEARING, COUNSEL FOR THE RESPONDENT INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (HEREINAFTER REFERRED TO AS THE IRONWORKERS) PLACED TWO MATTERS IN ISSUE. THE FIRST ISSUE IS WHETHER THE IRONWORKERS EMPLOYED ON THE CANADA LIFE PLACE PROJECT (HEREINAFTER REFERRED TO AS THE PROJECT) WERE EMPLOYEES OF THE RESPONDENT BEER PRECAST CONCRETE LIMITED (HEREINAFTER REFERRED TO AS BEER) OR EMPLOYEES OF E.G.M. CAPE & COMPANY LTD. (HEREINAFTER REFERRED TO AS CAPE). THE SECOND ISSUE IS WHETHER THE REQUIREMENTS OF SECTION 66(1) OF THE ACT HAVE BEEN MET SO AS TO GIVE THE BOARD JURISDICTION TO ENTERTAIN AND MAKE A DIRECTION WITH RESPECT TO THE WORK IN DISPUTE ON THE PROJECT.

3. CAPE IS THE GENERAL CONTRACTOR ON THE PROJECT. CAPE IS BOUND BY COLLECTIVE AGREEMENTS WITH BOTH THE LABOURERS AND IRONWORKERS. CAPE SUBCONTRACTED TO BEER THE SUPPLYING OF THE MATERIALS AND THE DOING OF ALL OF THE WORK INVOLVED IN THE ERECTION AND INSTALLATION OF PRECAST CONCRETE ARCHITECTURAL UNITS REQUIRED ON THE PROJECT, SAVE AND EXCEPT HOISTING OPERATIONS. THE CRANE AND OPERATOR FOR THIS PURPOSE IS BEING PROVIDED BY CAPE AND DOES NOT FORM A PART OF BEER'S CONTRACT WITH CAPE.

4. J. W. MCNAUGHTON, GENERAL SUPERINTENDENT OF CAPE, TESTIFIED THAT HE ANTICIPATED THAT THERE MIGHT BE A DISPUTE BETWEEN THE IRONWORKERS AND LABOURERS AS TO WHICH TRADE HAD JURISDICTION OVER THE WORK WHICH CAPE HAD SUBCONTRACTED TO BEER. MCNAUGHTON ACCORDINGLY SENT LETTERS DATED JANUARY 15, 1970 TO BOTH THE IRONWORKER AND LABOURERS. THE BODY OF THE LETTER SENT TO THE IRONWORKERS READS:

> WE ARE PARTIES TO A COLLECTIVE AGREEMENT WITH YOU WHICH WAS SIGNED ON OCTOBER 6, 1969. THAT AGREEMENT PROVIDES THAT WE WILL ONLY SUB-CONTRACT WORK COVERED BY THE AGREEMENT TO COMPANIES WHO HAVE COLLECTIVE AGREEMENTS WITH YOUR UNION. THE AGREEMENT COVERS PRECAST, STRUCTURAL AND ARCHITECTURAL WORK SUBJECT TO APPLICABLE TRADE AGREEMENTS AND DECISIONS OF RECORD.
>
> WE ARE REQUIRED TO SUB-CONTRACT CERTAIN PRECAST WORK AND WE HAVE BEEN ADVISED THAT THERE ARE NO ENFORCEABLE TRADE AGREEMENTS AFFECTING THE WORK IN QUESTION AND THAT THERE IS A DECISION OF RECORD OF THE ONTARIO LABOUR RELATIONS BOARD ASSIGNING THE SAME TYPE OF WORK TO MEMBERS OF THE LABOURERS' UNION. THAT ASSIGNMENT WAS MADE IN BOARD FILE NO. 14920(A)-68-JD.
>
> WE HAVE REVIEWED THIS DECISION AND ARE SATISFIED THAT THE SCOPE OF THE AGREEMENT IS THEREBY QUALIFIED AND THAT WE ARE UNDER NO OBLIGATION TO SUB-CONTRACT THIS WORK TO A COMPANY WHICH HAS A COLLECTIVE AGREEMENT WITH YOUR UNION. WE WOULD, THEREFORE, ADVISE YOU THAT THE WORK HAS BEEN SUB-CONTRACTED TO BEER PRECAST CONCRETE LIMITED AND THAT THEY WILL COMMENCE WORK IN ABOUT ONE WEEK'S TIME.
>
> IF YOU DO NOT AGREE WITH THE ABOVE WE WOULD ASK THAT YOU INFORM US IMMEDIATELY.

THE BODY OF THE LETTER SENT TO THE LABOURERS READS:

> We would advise you that the erection of certain precast by Beer Precast Concrete Limited will commence on the above-noted project in about one week's time.
>
> We are anticipating that Local 721 of the Ironworkers' Union will be claiming this work for members of its Union.
>
> We would appreciate your advice as to whether or not you claim this work for members of your Union or whether it would be proper for us to assign the work to members of the Ironworkers' Union if they so request.

Alan MacIsaac, business representative of the Ironworkers, replied to McNaughton's letter of January 15, 1970 by a telegram dated January 22, 1970, which reads:

> Do not agree with statements of your letter of January fifteen 1970. Suggest meeting to discuss same at earliest possible convenience.

Raymond Ford, business manager of the Labourers, replied to McNaughton's letter of January 15, 1970 by a letter dated January 23, 1970, the body of which reads:

> In answer to your letter of inquiry dated January 15, 1970 regarding erection of precast by Beer Precast Concrete Limited.
>
> This firm is a member of the Ontario Precast Concrete Manufacturers Association which has an agreement with the Labourers' International Union of North America for the erection and finishing of all precast products in the Province of Ontario.
>
> We the Labourers' Union have represented the precast workers for the last several years and do 95% of all precast erected in the Province of Ontario.
>
> The Ironworkers Union do not represent these workers and any suggested change in assignment would only create conflict on this project.
>
> These employees have joined and are represented by the Union of their choice, rights guaranteed them under the Ontario Labour Relation Act.

5. As a result of the response of the Ironworkers, McNaughton met with McIsaac on the job site of the Project on January 26, 1970 to discuss the jurisdictional claim of the Ironworkers to the work that had been subcontracted by Cape to Beer. The evidence is that another subcontractor on the Project, Omar Erection, was employing reinforcing rodmen and that Ontario Equipment Limited also had a sub-contract on the Project for the supply of cranes which are being used by employees of Ontario Equipment Limited to do the hoisting. Cape at that time had ironworkers in its own employ on other projects in Metropolitan Toronto. The testimony of McNaughton is that McIsaac insisted that Cape require Beer to employ two ironworkers in the performance of the work under its contract with Cape, namely the installation and erection of precast concrete architectural units. According to McNaughton, McIsaac conveyed the distinct impression to him (McNaughton) that if Cape did not comply with this requirement, he (McIsaac) would withdraw the services of those persons working on the Project who were members of the Ironworkers Union, or otherwise cause a work stoppage on the Project. McIsaac denied that he made any threat of this nature. In any event, McIsaac prevailed upon McNaughton to require Beer to employ two ironworkers on the Project in the performance of its contract with Cape, notwithstanding the protests of the industrial relations manager of Beer, William White, and Ford on behalf of the Labourers.

6. Beer commenced the work under its contract at the end of January 1970, assigning all of the work to the Labourers. As has been mentioned, Beer has a collective agreement with the Labourers and has no collective agreements with any other union, including the Ironworkers. White testified that after first refusing to accept ironworkers to perform any of the work under its contract with Cape, he finally capitulated and agreed to use two ironworkers on the insistence of McNaughton. McNaughton, for his part, testified that he would not have required Beer to alter its assignment, except for the adamant position taken by McIsaac.

7. Two ironworkers reported for work on the night shift on February 2, 1970, and were at work on February 6, 1970, the date of the filing of the instant complaint. Two ironworkers have been employed by Beer since February 2nd at all time when Beer has been installing and erecting precast concrete architectural units, which is work falling under Beer's contract with Cape. The ironworkers have been working in a crew with Labourers. The ironworkers have been working completely under the direction and control of the supervisory personnel of Beer in the same manner as the Labourers. While the ironworkers are on the payroll of Cape and are paid by Cape, the wages paid by Cape to the ironworkers, together with the latter company's contributions on behalf of the ironworkers for welfare,

pension and workmen's compensation, are all backcharged to Beer. In other words, all of the ironworkers wages and other benefits, in fact, are ultimately paid by Beer. We would mention that the evidence is that Beer has laid off and recalled ironworkers and has even discharged one of them.

8. We turn now to the first issue raised by counsel for the Ironworkers, namely who is the employer of the ironworkers who are installing and erecting precast concrete architectural units for Beer under its contract with Cape. This issue was dealt with in Gould v. Minister of National Insurance Case [1951] 1 A.E.R. 368 and by the Board in the Municipality of Metropolitan Toronto Case 61 CLLC 955 and Goldlist Construction Limited Case OLRB M.R. October 1966, p. 487.

9. In the Gould Case (supra) the court held that the real question as to who is the employer in a contract of service is one of the degree of control exercised and this means not only the amount of control but the nature of the control and the direction in which it is exercised. Indicia to be considered are: (a) the master's power of selection of his servant; (b) the payment of wages and other remuneration; (c) the master's right to control the method of doing the work; and (d) the master's right of suspension or dismissal. Based on indicia (b), (c) and (d), clearly Beer is the employer.

10. In the Municipality of Metropolitan Toronto Case (supra) a question arose as to whether the employees of Metropolitan Toronto Jail were employees of The Municipality of Metropolitan Toronto or the Government of the Province of Ontario. The evidence in that case was that the employees were appointed by, and that the terms and conditions of their employment were under the exclusive control and direction of the Government of Ontario. On the other hand, the employees were paid by the Municipality. The Board found that no employment relationship existed between The Municipality of Metropolitan Toronto and the persons employed by The Municipality of Metropolitan Toronto Jail. In arriving at this conclusion, the Board stated at p. 955:

> . . . While it is true that the Municipality in fact pays these employees, it is also true that the amount which it is required to pay them is in fact regulated and prescribed by the Government of the Province of Ontario. Although in the absence of other circumstances, the factor of payment may well constitute a cogent circumstance from which an employment relationship may be inferred, the evidence in this case shows that the Municipality has no apparent control whatever over the amount which shall be paid and is completely devoid of any apparent power or authority to hire or fire or to prescribe any of the terms or conditions of employment

> FOR THESE EMPLOYEES. ON THE CONTRARY, THE GOVERNMENT OF THE PROVINCE OF ONTARIO RETAINS, AND IN FACT EXERCISES, THE EXCLUSIVE POWER OF DETAILED CONTROL AND DIRECTION WITH RESPECT TO THE APPOINTMENT, PROMOTION, SALARY, DUTIES AND WORK OF THESE EMPLOYEES.

APPLYING THE FACTS OF THE MUNICIPALITY OF METROPOLITAN CASE (SUPRA) TO THOSE OF THE INSTANT COMPLAINT, UNLIKE THE PROVINCE OF ONTARIO, WHICH WAS FOUND TO BE THE EMPLOYER OF THE JAIL EMPLOYEES, WHILE THE IRONWORKERS ARE PAID THE WAGE RATE PROVIDED FOR IN CAPE'S COLLECTIVE AGREEMENT WITH THE IRONWORKERS, THE TERMS AND CONDITIONS OF EMPLOYMENT OF THE IRONWORKERS WORKING FOR BEER ARE DETERMINED EXCLUSIVELY BY BEER. FURTHER, WHILE CAPE PAYS THE IRONWORKERS, ALL PAYMENTS MADE BY CAPE TO AND ON BEHALF OF THE IRONWORKERS ARE BACKCHARGED TO BEER. THE BOARD FOUND IN THE ABOVE CITED CASE THAT THE GOVERNMENT OF THE PROVINCE OF ONTARIO RETAINED AND IN FACT EXERCISED THE EXCLUSIVE POWER OF DETAILED CONTROL AND DIRECTION WITH RESPECT TO THE APPOINTMENT, PROMOTION, SALARY, DUTIES AND WORK OF THESE EMPLOYEES. CAPE, ON THE OTHER HAND, VIRTUALLY RETAINED NONE OF THESE POWERS, THE FULL RESPONSIBILITY FOR THE IRONWORKERS BELONGING TO BEER.

11. IN THE GOLDLIST CONSTRUCTION LIMITED CASE (SUPRA) THE EMPLOYEES CONCERNED WERE PAID BY CHEQUES HEADED "GOLDLIST PAYROLL ACCOUNT". THE BOARD NOTED, HOWEVER, IN CITING THE MUNICIPALITY OF METROPOLITAN TORONTO CASE (SUPRA), THAT THE FACTOR OF PAYMENT IS NOT NECESSARILY DETERMINATIVE OF AN EMPLOYMENT RELATIONSHIP. THE BOARD FOUND IN THE GOLDLIST CASE THAT THE MONIES PAID INTO THE GOLDLIST PAYROLL ACCOUNTO TO SATISFY WAGE AND OTHER DEDUCTION CHEQUES DRAWN ON THE ACCOUNT CAME FROM TWO OTHER PARTNERSHIPS AND NOT GOLDLIST, EXCEPT IN SO FAR AS THAT COMPANY HAD AN INTEREST IN THE PARTNERSHIP. THE BOARD FOUND THAT THE PARTNERSHIPS RATHER THAN GOLDLIST CONSTRUCTION LIMITED WERE THE EMPLOYERS.

12. APPLYING THE FACTS AND PRINCIPLES LAID DOWN IN THE ABOVE CASES TO THE SITUATION BEFORE US IN THE INSTANT CASE, THE BOARD FINDS THAT BEER IS THE EMPLOYER OF THE IRONWORKERS WHO ARE ENGAGED IN PERFORMING WORK WHICH IS THE SUBJECT MATTER OF THE INSTANT COMPLAINT.

13. WITH REGARD TO THE SECOND ISSUE, THE FACTS OF THE INSTANT COMPLAINT ARE ANALOGOUS TO THOSE IN THE BEER PRECAST CONCRETE LIMITED CASE OLRB M.R. JANUARY 1969, P. 1108. IN THAT CASE, BEER WAS THE COMPLAINANT AND WAS SEEKING A DIRECTION FROM THE BOARD OVER A WORK ASSIGNMENT WHICH IT HAD MADE (THE DETAILS OF WHICH ARE NOT RELEVANT FOR PURPOSES OF THE INSTANT COMPLAINT) THAT RESULTED IN A JURISDICTIONAL DISPUTE BETWEEN ANOTHER LOCAL OF THE IRONWORKERS AND THE LABOURERS. BEER HAD A SUBCONTRACT FROM THE GENERAL CONTRACTOR ON THE PROJECT IN QUESTION. PIGOTT CONSTRUCTION COMPANY LIMITED, TO DO THE WORK IN DISPUTE. THE IRONWORKERS CHALLENGED THE JURISDICTION OF THE BOARD TO ENTERTAIN THE COMPLAINT

inter alia that it was the general contractor Pigott and not the Ironworkers that was requiring Beer to assign part of the disputed work to Ironworkers. In the instant case, although it is the Labourers rather than Beer which is the complainant, the position of Cape is the same as that of Pigott in the above case and Beer's situation is similar in both cases. In the earlier *Beer Precast Concrete Limited Case* (supra) the Board ruled, on the basis of the allegations contained in the complaint, that it had jurisdiction to entertain the complaint. The Board's ruling, however, was made contingent on Beer being able to adduce evidence in support of its allegation that it was the Ironworkers who were requiring Pigott to make Beer hire an ironworker to do a part of the work in dispute.

14. The Ironworkers in the *Beer Precast Concrete Limited Case* (supra) thereupon brought an original Notice of Motion in the Supreme Court of Ontario for an order quashing the interim order that the Board had already made and prohibiting the Board from hearing or conducting any further proceedings with respect to the complaint. Fraser, J. who heard the motion handed down a decision dismissing the motion. In his decision (*Regina v. Ontario Labour Relations Board ex parte International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 736* 68 CLLC 11,732) Mr. Justice Fraser stated that the gist of Beer's complant was that the Ironworkers instigated or caused the action of Pigott. After a consideration of the material before him and the representations of the parties, he went on to say at p. 11,735:

> Having regard to its context and the purpose of the statute in which it is bound I am satisfied that "agent" in section 66 is used in its broad general sense rather than in a narrow specialized sense such as is found in the law of contracts. To hold that a union could avoid the effect of section 66 by interposing some third person or agency to do the requiring would give section 66 an unduly restrictive meaning and frustrate the plain purpose of the enactment.

15. In the instant case, we find on the evidence that the Ironworkers instigated or caused Cape to require Beer to assign part of the work involved in its contract, which is the subject matter of this dispute, to members of the Ironworkers. In other words, Cape was the "agent" of the Ironworkers within the context of section 66(1) of the Act. Accordingly, for the reasons given in both the Board's decision and the judgment of Mr. Justice Fraser in the *Beer Precast Concrete Limited Case* (supra) the Board finds that it has jurisdiction to entertain and make a direction with respect to the work assignment dispute in the instant complaint.

16. The Board directs that the Registrar re-list this matter for continuation of hearing for the purpose of entertaining the evidence and representations on the merits of the complaint.

17650-70-JD: Local No. 31 Marble Masons, Tile Setters and Terrazzo Mechanics affiliated with the Bricklayers, Masons and Plasterers International Union of America (Complainant) v. LOCAL 598 OF THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA AND OMEGA MARBLE COMPANY LTD. (Respondents).

BEFORE: J. H. Brown, Q.C., Alternate Chairman, and Board Members E. Boyer and R. W. Teagle.

APPEARANCES AT THE HEARING: R. Koskie and D. DeMonte for the complainant, Mrs. J.E. Sigurdson and R. D'Alessandro for the respondent union, A. J. Clark and D. H. Stevens for the respondent company.

DECISION OF THE BOARD: May 20, 1970.

1. This is a complaint made under section 66 of The Labour Relations Act.

2. The complainant (hereinafter referred to as Local #31) is requesting that the Board issue a direction with respect to a work assignment dispute between itself and the respondent trade union (hereinafter referred to as Local #598).

3. The respondent company (hereinafter referred to as Omega) is party to a collective agreement with Local #31 effective from May 1, 1966 until April 30, 1970. Article 12 of the agreement titled "Jurisdictional Conflicts" reads: "It is agreed by the Contractor that where the work of the trades covered in this Agreement conflict in any way with the other branches of the International Body, such regulations as are in general practised by such International Body, shall apply." Omega is also bound by a collective agreement with Local #598 effective from July 12, 1969 until April 30, 1971. Article 29 titled "Jurisdictional Disputes" provides for the reference of any work assignment disputes to this Board.

4. The evidence is that in January of 1970 Omega assigned all of the work being done in connection with the preparation, laying and finishing of quartzite aggregate floors at the Alcoholic and Drug Addiction Centre Project in Metropolitan Toronto to members of Local #31. Terrazzo mechanics commenced to do the work in the early part of February and have continued to do so up to the date of the Board hearing of the instant complaint.

5. Donald Stevens, the Director of Industrial Relations for Omega, testified that in late January or early February of 1970 he discussed the assignment which Omega had made with R. D'Alessandro, Business Representative of Local #598. R. D'Alessandro objected to the assignment of the above work to the terrazzo mechanics claiming that the work fell within the jurisdiction of the cement masons.

6. Notwithstanding the provision in the collective agreement between Omega and Local #598 to refer any work assignment dispute to this Board, Stevens and D'Alessandro agreed to submit the dispute to the National Joint Board for the Settlement of Jurisdictional Disputes in Washington, D.C.. In accordance with this oral agreement, Stevens sent the following telegram dated February 13, 1970 to W. J. Cour, Chairman of the National Joint Board:

> Please be advised that a jurisdictional dispute exists between Local 598 of the Operative Plasterers and Cement Masons International Association of the United States and Canada and Local Number 31 Marble Masons Tilesetters and Terrazzo Mechanics affiliated with the Bricklayers Masons and Plasterers International Union of America Stop The project involved is the Alcoholic and Drug Addiction Centre Toronto Canada Stop The general contractor is Robertson-Yates Limited Hamilton Canada Stop The sub contractor is Omega Marble Company Limited 20 Principal Road Toronto Stop The work in dispute involves the laying and finishing of a ceramic coated quartz flooring in matrix epoxy Stop The specifications provide that the installation be trowelled and sealed with epoxy or urethane coatings Stop The finished flooring is trowelled only Stop It is not ground Stop The sub contractor has assigned the work in dispute to the Marble Masons Tile Setters and Terrazzo Mechanics based on area practice Stop The sub contractor requests a job decision regarding the work in dispute in accordance with the procedural rules and regulations of the National Joint Board Stop

7. Stevens' evidence is that he did not consult with Daniel DeMonte, Business Representative of Local #31, before sending the above telegram requesting a job decision on the work in dispute. Stevens testified that he interpreted Article 12 of Omega's agreement with Local #31, which is quoted in paragraph 3 of this decision, to mean that any work assignment dispute was to be settled by the National Joint Board. We would mention in passing that we question the interpretation placed on Article 12 by Stevens.

8. In any event, upon receipt of Stevens' telegram of February 13, 1970, William C. Cour forwarded a copy of the telegram by letters dated March 2, 1970 to Edward J. Leonard, the General President of the Operative Plasterers and Cement Masons International Association, and Thomas Murphy, the General President of the Bricklayers Masons and Plasterers International Union, for the purpose of allowing the two Presidents to work out an adjustment of the

DISPUTE IN ACCORDANCE WITH THE POLICY ADOPTED BY THE NATIONAL JOINT BOARD. THE TWO INTERNATIONAL PRESIDENTS WERE REQUESTED TO DIRECT THE LOCAL OF THEIR RESPECTIVE UNIONS INVOLVED IN THE DISPUTE TO PROCEED WITH THE WORK IN ACCORDANCE WITH OMEGA'S WORK ASSIGNMENT PENDING SUCH AN ADJUSTMENT. THE TWO PRESIDENTS WERE ADVISED BY COUR THAT OMEGA'S REQUEST FOR A JOB DECISION WOULD BE HELD IN ABEYANCE PENDING RECEIPT OF NOTICE IN WRITING THAT THE DISPUTE COULD NOT BE ADJUSTED DIRECTLY AND THAT THE INTERNATIONAL UNION WHICH HAD THE WORK ASSIGNMENT COMPLAINT JOIN IN OMEGA'S REQUEST THAT THE DISPUTE BE PROCESSED FOR A JOB DECISION BY THE NATIONAL JOINT BOARD.

9. BY LETTER DATED MARCH 2, 1970, D'ALESSANDRO PROVIDED CERTAIN INFORMATION CONCERNING THE JOB TO HIS INTERNATIONAL PRESIDENT, E. J. LEONARD, IN RESPONSE TO A REQUEST MADE BY THE LATTER BY LETTER DATED FEBRUARY 17, 1970. IN THAT LETTER, D'ALESSANDRO ADVISED LEONARD THAT DEMONTE WAS UNWILLING TO MEET WITH STEVENS AND D'ALESSANDRO TO DISCUSS THE WORK ASSIGNMENT DISPUTE. BY LETTER DATED MARCH 4, 1970, LEONARD ADVISED COUR THAT HIS UNION WAS JOINING IN THE CONTRACTOR'S REQUEST FOR A HEARING BEFORE THE NATIONAL JOINT BOARD BECAUSE OF THE FAILURE TO ADJUST THE DISPUTE AT THE JOB SITE. BY LETTER DATED MARCH 5TH, MURPHY WAS ADVISED BY COUR THAT LEONARD HAD JOINED WITH OMEGA IN REQUESTING A JOB DECISION ON THE DISPUTE AT THE ALCOHOLIC AND DRUG ADDICTION CENTRE PROJECT AND ASKED MURPHY TO ADVISE AS TO HIS POSITION BY MARCH 12, 1970. BY LETTER OF THE SAME DATE, COUR REQUESTED THAT OMEGA AND THE GENERAL CONTRACTOR ON THE PROJECT, ROBERTSON-YATES LIMITED, SEND A FULL AND COMPLETE DESCRIPTION OF THE WORK IN DISPUTE INCLUDING, IF POSSIBLE, PICTURES AND PRINTS, BY MARCH 12, 1970. BY LETTER DATED MARCH 6, 1970, GEORGE KING, FIRST VICE-PRESIDENT OF THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION, ADVISED COUR, IN RESPONSE TO HIS LETTER OF MARCH 5, 1970, THAT THE POSITION OF HIS UNION WAS THAT THE WORK IN DISPUTE HAD ALWAYS BEEN DONE BY THE TERRAZZO WORKERS IN THE TORONTO AREA. IN RESPONSE TO A TELEPHONE CONVERSATION WITH KING ON MARCH 6, 1970, AFTER STATING THAT IT WAS HIS CONSIDERED OPINION THAT NO DISPUTE EXISTED AND THAT THE WORK HAD BEEN PERFORMED BY TERRAZZO MECHANICS FOR "THE PAST NUMBER OF YEARS", FORWARDED PHOTOGRAPHS OF THE WORK IN DISPUTE TO KING. DEMONTE ADVISED KING, IN THE SAME LETTER, THAT IF THE LATTER WANTED ANY ADDITIONAL INFORMATION TO COMMUNICATE WITH DEMONTE.

10. BY LETTER DATED MARCH 20, 1970, COUR WROTE A LETTER TO THE ATTENTION OF LEONARD, MURPHY, ROBERTSON-YATES LIMITED AND OMEGA, THE BODY OF WHICH READS AS FOLLOWS:

> AT ITS MEETING MARCH 19, 1970 THE JOINT BOARD CONSIDERED THE JURISDICTIONAL DISPUTE BETWEEN THE OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION AND THE

BRICKLAYERS MASONS AND PLASTERERS INTERNATIONAL UNION OVER LAYING AND FINISHING OF CERAMIC COATED QUARTZ FLOORING IN MATRIX EPOXY, ALCOHOLIC AND DRUG ADDICTION CENTER PROJECT, TORONTO ONTARIO CANADA, ROBERTSON-YATES LIMITED CONTRACTOR, OMEGA MARBLE COMPANY LIMITED SUBCONTRACTOR.

THE JOINT BOARD VOTED TO MAKE THE FOLLOWING JOB DECISION: THE WORK IN DISPUTE SHALL BE ASSIGNED TO CEMENT MASONS ON THE BASIS OF TRADE PRACTICE.

THIS ACTION OF THE JOINT BOARD WAS PREDICATED UPON PARTICULAR FACTS AND EVIDENCE BEFORE IT REGARDING THIS DISPUTE AND SHALL BE EFFECTIVE ON THIS PARTICULAR JOB ONLY.

11. BY TELEGRAM DATED MARCH 25, 1970, KING SENT THE FOLLOWING TELEGRAM TO COUR:

FOLLOWING TELEGRAM SENT THIS DATE TO CHAIRMAN APPEALS BOARD:

"WE RESPECTFULLY REQUEST CONSIDERATION OF OUR APPEAL FROM DECISION OF NATIONAL JOINT BOARD IN JURISDICTIONAL DISPUTE BETWEEN OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION AND BRICKLAYERS MASONS AND PLASTERERS INTERNATIONAL UNION OVER LAYING AND FINISHING OF CERAMIC COATED QUARTZ FLOORING IN MATRIX EPOXY, ALCOHOLIC AND DRUG ADDICTION CENTER PROJECT, TORONTO, ONTARIO, CANADA, ROBERTSON-YATES LTD. CONTRACTOR, OMEGA MARBLE COMPANY LTD. SUBCONTRACTOR. WE FEEL NATIONAL JOINT BOARD IMPROPERLY AWARDED WORK TO CEMENT MASONS. ALL PARTIES INVOLVED BEING NOTIFIED OF APPEAL. LETTER AND DECISION TO FOLLOW.

12. RICHARD J. MITCHELL, THE CHAIRMAN OF THE APPEALS BOARD, SENT A LETTER DATED APRIL 1, 1970 TO MURPHY, THE BODY OF WHICH READS:

IN THE MATTER OF THE JURISDICTIONAL DISPUTE BETWEEN THE BRICKLAYERS, MASONS & PLASTERERS INTERNATIONAL UNION AND THE OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION, OVER LAYING AND FINISHING OF CERAMIC COATED QUARTZ FLOORING IN MATRIX EPOXY, ALCOHOLIC AND DRUG ADDICTION CENTER, TORONTO, CANADA; ROBERTSON-YATES LTD., CONTRACTOR AND OMEGA

> MARBLE COMPANY, SUBCONTRACTOR, THE APPEALS BOARD DENIES YOUR REQUEST FOR CONSIDERATION OF APPEAL FROM THE DECISION OF THE NATIONAL JOINT BOARD.
>
> THE REJECTION OF THE REQUEST FOR CONSIDERATION OF APPEAL BY THE APPEALS BOARD IS NOT TO BE CONSTRUED AS CONSTITUTING ANY RULING ON THE MERITS OF A DISPUTE, NOR DOES IT PREJUDICE A FURTHER REQUEST FOR CONSIDERATION OF AN APPEAL ON A SIMILAR CASE IN THE FUTURE.

13. BY LETTER DATED APRIL 3, 1970, KING SENT A LETTER TO MITCHELL, THE BODY OF WHICH READS:

> PURSUANT TO OUR TELEGRAM OF MARCH 25, 1970, REQUESTING CONSIDERATION OF AN APPEAL FROM THE NATIONAL JOINT BOARD'S DECISION IN THE JURISDICTIONAL DISPUTE BETWEEN THE OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION AND THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OVER LAYING AND FINISHING OF CERAMIC COATED QUARTZ FLOORING IN MATRIX EPOXY, ALCOHOLIC AND DRUG ADDICTION CENTER PROJECT, TORONTO, ONTARIO, CANADA, ROBERTSON-YATES, LTD., CONTRACTOR, OMEGA MARBLE COMPANY, LTD., SUBCONTRACTOR, WE ARE ENCLOSING HEREWITH A COPY OF THE JOINT BOARD'S DECISION.
>
> IT IS A WELL ESTABLISHED FACT THAT THE LAYING AND FINISHING OF CERAMIC COATED QUARTZ FLOORING IN MATRIX EPOXY IN THE TORONTO AREA HAS ALWAYS BEEN DONE BY OUR MEMBERS AND CAN BE SUPPORTED BY DOCUMENTARY EVIDENCE.
>
> TRUSTING WE WILL BE GIVEN THE OPPORTUNITY TO PRESENT TO THE APPEALS BOARD FOR THEIR REVIEW AND CONSIDERATION THE EVIDENCE WE HAVE COMPILED TO SUBSTANTIATE OUR CLAIM THAT THIS IS THE WORK OF THE MEMBERS OF THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA, I REMAIN

14. STEVENS TESTIFIED THAT DEMONTE ALSO ADVISED HIM THAT LOCAL #31 DID NOT INTEND TO BE BOUND BY THE DECISION OF THE NATIONAL JOINT BOARD. DEMONTE ONLY SO ADVISED STEVENS, HOWEVER, AFTER THE NATIONAL JOINT BOARD HAD ISSUED ITS DECISION OF MARCH 20, 1970 IN FAVOUR OF LOCAL #598.

15. THE EVIDENCE OF JAMES BOYLE, AN INTERNATIONAL REPRESENTATIVE OF THE OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL

Association, was that he attended the hearing of the instant dispute before the National Joint Board in Washington, D.C. held on March 20, 1970. Boyle testified that he had made representations on behalf of his union and that King had done likwise, all in accordance with the procedural rules and regulations established by the National Joint Board which are set out in a booklet which was filed as an exhibit.

16. Since the collective agreement between Omega and Local #31, on the one hand, and the collective agreement Omega and Local #598, on the other, do not provide for the reference of work assignment disputes to the National Joint Board, it cannot be said that by virtue of the collective agreements, the National Joint Board is a tribunal mutually selected by the parties to the dispute which could make a determination that was binding upon them. Accordingly, the Board is not deprived of jurisdiction to entertain the instant complaint by reason of the provisions of subsection (8) of section 66.

17. Counsel for Local #598 submits, however, that subsection (7) of section 66 of the Act should be taken into account in the present situation. Subsection (7) reads:

> Notwithstanding subsection 1 and 2, where a trade union or a council of trade unions and an employer or an employers' organization have made an arrangement to resolve any differences between them arising from the assignment of work, the Board may, upon such terms and conditions as it may fix, postpone inquiring into a complaint under this section until the difference has been dealt with in accordance with such arrangement.

18. Counsel for Local #598 argues that the three parties to the dispute, namely Local #31, Local #598 and Omega, made an arrangement to resolve the work assignment dispute by referring it to the National Joint Board. Counsel submits that simply because Local #31 and, for that matter, Omega are not satisfied with the result, Local #31, having participated in the proceedings before the National Joint Board, should not be afforded an opportunity to try to negate the effect of the National Joint Board's award, by way of what amounts to an appeal to this Board. Counsel noted that the Joint Board's award had already been appealed to the National Appeals Board, albeit unsuccessfully. In these circumstances, counsel argues that not only should the Board postpone any inquiry into the complaint but in the exercise of the discretion vested in the Board by subsection (1) of section 66, the Board should decline to make any inquiry into the complaint.

19. Counsel for Local #31 denies that any "arrangement" was entered into by the three parties having an interest in the dispute.

Counsel noted that Stevens did not even consult with Local #31, the union to which Omega had assigned the work, prior to requesting a job decision from the National Joint Board. Counsel argues that while Local #31 participated in the proceedings of the National Joint Board, it did not do so on a voluntary basis but rather only in an effort to protect its position. Counsel further noted that according to the evidence of Boyle, at the hearing of the Joint Board, no evidence was placed before that body as to the Toronto area practice in the assignment of the work in dispute. In all these circumstances, counsel submitted that the Board should entertain the instant complaint.

20. Counsel for Omega subscribed to the submissions advanced by counsel for Local #31. Counsel for Omega, however, submitted that even assuming for purposes of argument only that the three parties involved in the dispute did make an "arrangement" for reference of the dispute to the National Joint Board, subsection (7) only contemplates a postponement of any inquiry into the complaint until the difference has been dealt with in accordance with such arrangement. Counsel pointed out that the difference has now been dealt with in accordance with that arrangement, i.e. the Joint Board has rendered its decision. Counsel argues, however, that the work assignment dispute still exists between the two competing trades on the job. Counsel for Omega further submits that had counsel for Local #598 given advance notice that she intended to rely on the discretionary language of subsection (1) of section 66, he might have called evidence relating to the conduct of the National Joint Board hearing and the resultant applicability of its award to the Toronto area. In all the circumstances, counsel submits that the Board should not postpone or decline to entertain and make a direction with regard to the complaint.

21. It is true that Local #31 was not consulted in the original "arrangement" for the reference of the work assignment dispute to the National Joint Board. Further, George King, the First Vice-President of the Bricklayers, Masons and Plasterers International Union of America, upon being notified by the Chairman of the National Joint Board that the President of the Operative Plasterers International Association had joined with Omega in requesting a job decision, adopted the position that the work in dispute always had been done by terrazzo worker members of his union. The fact remains, however, that King did not refuse to participate in the Joint Board proceedings or declare that his union would not be bound by any decision of that tribunal. Indeed, it is undisputed that King appeared at the hearing before the Joint Board and made representations on behalf of his union. Moreover, King was prepared to adduce documentary evidence to substantiate the terrazzo workers' claim to the disputed work before the Appeals Board. Further, it cannot be successfully argued that Daniel DeMonte, the

Business Representative of Local #31, rejected the "arrangement" made by Omega and Local #598 to refer the dispute to the Joint Board. DeMonte maintained that there was no dispute and that the work fell within the jurisdiction of terrazzo mechanics. Upon the request of King, however, DeMonte provided material to the former which, it is our conclusion, he must have assumed was to be used for purposes of preparation of King's brief for the hearing before the National Joint Board. It was only after the National Joint Board had rendered its job decision, which was unfavourable to Local #31, that DeMonte announced to Stevens that he would not be bound by it.

22. Based on the evidence of Boyle, adduced in cross-examination, counsel for Local #31 argued that it was apparent that no evidence as to the Toronto area practice relating to the work in dispute was presented to the National Joint Board and that no consideration was given to this factor by that body in making its decision. It may well be that the National Joint Board did not take into account nor give weight to the same factors that this Board would consider in making a direction on a work assignment dispute. There is no suggestion, however, that the National Joint Board did not follow its own rules and procedures in the handling of the dispute. Moreover, its rules and procedures, which are set out in booklet form, as well as the type of hearing which it conducts, were known to all three parties. According to the evidence, the National Joint Board followed its prescribed procedures in dealing with the instant dispute.

23. Having regard to the foregoing, we are not prepared to countenance the submission of counsel for Local #31 and the suggestion of counsel for Omega that there was not a fair hearing or that there was an inadequate hearing of the dispute on its merits before the National Joint Board. We reject also the argument of counsel for Omega that his position was in any way prejudiced at the hearing of this Board by reason of the failure of counsel for Local #598 to set out in the Reply of the said union that it was asking the Board to exercise its discretion under subsection (1) of section 66 and refuse to entertain the complaint. This submission, at least by inference, is set out in the Reply of Local #598 and was made explicit in the statement which counsel for Local #598 made at the commencement of the hearing before this Board on May 1, 1970. We reject also the argument of counsel for Omega that there has been no settlement of the dispute. All three parties concerned participated in proceedings before the National Joint Board and that tribunal has rendered a job decision. The fact that Local #31 is dissatisfied with that decision does not impugn the Joint Board's determination.

24. In summary, Omega, pursuant to an oral agreement with Local #598, requested the National Joint Board to make a job

DECISION ON THE WORK IN DISPUTE ON THE ALCOHOLIC AND DRUG ADDICTION CENTRE PROJECT IN METROPOLITAN TORONTO. LOCAL #598 SUBSEQUENTLY FORMALLY JOINED IN THAT REQUEST. IN LIGHT OF THE CONDUCT OF THESE TWO PARTIES, NEITHER IS IN ANY JUSTIFIABLE POSITION TO NOW REJECT THAT DECISION. LOCAL #31 AND ITS PARENT INTERNATIONAL DID NOT OBJECT TO THIS ACTION PRIOR TO A DECISION BEING RENDERED BY THAT TRIBUNAL AND THE LATTER FULLY PARTICIPATED IN THE HEARING BEFORE THE NATIONAL JOINT BOARD. WHETHER THE PARENT BODY AND ITS LOCAL DID SO BECAUSE OF A GENUINE DESIRE TO HAVE THE NATIONAL JOINT BOARD SETTLE THE ISSUE OR BECAUSE OF OBLIGATIONS THEY MAY HAVE BEEN UNDER TO DO SO, DUE TO AFFILIATIONS WITH THE CONSTRUCTION TRADES DEPARTMENT, AFL-CIO, IS NOT MATERIAL.

25. IN ALL THE CIRCUMSTANCES, THIS BOARD IS OF THE OPINION THAT IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 66 OF THE ACT, IT SHOULD NOT INQUIRE INTO THE INSTANT COMPLAINT.

26. THE COMPLAINT, ACCORDINGLY, IS DISMISSED.

INDEXED ENDORSEMENT - SECTION 79(2)

17411-69-M: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U. (APPLICANT) v. VICTORIA HOSPITAL, LONDON, ONTARIO (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: JOHN M. ASKIN AND CHARLES P. DAVIDSON FOR THE APPLICANT; W.J. WHITTAKER, Q.C. AND H. T. DENNIS FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 12, 1970.

1. THIS IS AN APPLICATION PURSUANT TO SECTION 79(2) OF THE LABOUR RELATIONS ACT.

2. THE APPLICANT SUBMITS THAT A QUESTION HAS ARISEN AS TO WHETHER MR. COSTANTINE FABRIKIS - A NON-REGISTERED CARDIOLOGICAL TECHNICIAN IS AN EMPLOYEE FOR THE PURPOSES OF BARGAINING UNDER THE ONTARIO LABOUR RELATIONS ACT.

3. HAVING REGARD TO THE REPRESENTATIONS AND SUBMISSIONS OF THE PARTIES WE ARE OF THE OPINION THAT THIS APPLICATION CANNOT SUCCEED FOR THE FOLLOWING REASONS.

4. FIRST, SECTION 79(2) OF THE LABOUR RELATIONS ACT PROVIDES:

"IF, ... DURING THE PERIOD OF OPERATION OF A

> COLLECTIVE AGREEMENT, A QUESTION ARISES AS TO WHETHER A PERSON IS AN EMPLOYEE ...., THE QUESTION MAY BE REFERRED TO THE BOARD....".

IT APPEARS THAT PRIOR TO THE BRINGING OF THIS APPLICATION THERE WAS NO DISCUSSION BETWEEN THE APPLICANT AND THE RESPONDENT CONCERNING MR. FABRIKIS. IT IS THE INTENTION OF THE LABOUR RELATIONS ACT WHERE RECOGNITION HAS BEEN GRANTED TO ENCOURAGE A DIALOGUE BETWEEN UNIONS AND EMPLOYERS. NOT ONLY WOULD THIS APPEAR TO BE GOOD LABOUR RELATIONS, BUT IT WOULD ALSO APPEAR TO BE GOOD SENSE. THE BOARD HAS PERIODICALLY SUGGESTED THAT PRIOR TO AN APPLICATION BEING MADE UNDER SECTION 79(2), "THE PARTIES THEMSELVES SHOULD ATTEMPT TO RESOLVE THE QUESTION BEFORE MAKING AN APPLICATION TO THE BOARD". THE BEAVER WOOD FIBRE CO. LTD. AND INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS 1960 CLLC 16,184, THE BOARD HAS ALSO INDICATED THAT AN APPLICATION MADE PRIOR TO DISCUSSIONS IS PREMATURE. LOCAL 4509, UNITED STEELWORKERS OF AMERICA V ALGOMA STEEL CORPORATION LIMITED 1965 SEPTEMBER OLRB MTHLY REP P 411.

5. SECOND, IT APPEARED FROM THE SUBMISSIONS OF THE PARTIES THAT WHAT THE APPLICANT IS SEEKING IS A DETERMINATION WHETHER MR. FABRIKIS FALLS WITHIN THE SCOPE OF THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT. THE BOARD HAS RECOGNIZED THAT WHETHER A PERSON IS COVERED BY A COLLECTIVE AGREEMENT IS A SEPARATE ISSUE FROM THE QUESTION AS TO WHETHER A PERSON IS AN EMPLOYEE FOR THE PURPOSES OF THE ACT. THE FORMER ISSUE IS PROPERLY ONE FOR ARBITRATION WHILE THE LATTER IS A QUESTION FOR THE BOARD. SEE ALGOMA STEEL CORPORATION LIMITED SUPRA; CANADIAN UNION OF GENERAL EMPLOYEES V NORTH YORK GENERAL HOSPITAL BOARD FILE #17523-69-M, UNREPORTED APRIL 6TH, 1970.

6. FOR THE FOREGOING REASONS THE APPLICATION IS DISMISSED. FURTHER, THE RESPONDENT DID NOT ADMIT THAT MR. FABRIKIS WAS AN EMPLOYEE FOR THE PURPOSES OF THE ACT, AND IN THE CIRCUMSTANCES THEREFORE THE APPLICATION IS DISMISSED BUT WITHOUT PREJUDICE TO THE APPLICANT BRINGING A FURTHER APPLICATION TO DETERMINE WHETHER MR. FABRIKIS IS AN EMPLOYEE FOR THE PURPOSES OF THE ACT.

INDEXED ENDORSEMENT - SECTION 79A

17470-69-M: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (TRADE UNION) V. GARDEN CITY LAUNDRY LIMITED (EMPLOYER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: J.B. WATERMAN, V. KNAP AND KEITH COUTLEE FOR THE TRADE UNION; DANIEL MONSON FOR THE EMPLOYER.

DECISION OF O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER P.J. O'KEEFFE: MAY 28, 1970.

1. THIS IS AN APPLICATION PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT WHEREIN THE MINISTER OF LABOUR HAS REFERRED TO THE BOARD THE QUESTION AS TO WHETHER AT THE TIME OF THE GRIEVANCE DATED FEBRUARY 5TH, 1970, THERE WAS A COLLECTIVE AGREEMENT BETWEEN THE EMPLOYER AND THE TRADE UNION.

2. IT APPEARS FROM THE DOCUMENTS FILED THAT THE APPLICANT UNION HAS REQUESTED THE MINISTER TO APPOINT A NOMINEE TO AN ARBITRATION BOARD PURSUANT TO AN ALLEGED COLLECTIVE AGREEMENT. THE EMPLOYER CONTENDS THAT THERE IS NO COLLECTIVE AGREEMENT AND ALTERNATIVELY THAT IF THERE IS A COLLECTIVE AGREEMENT IN EXISTENCE THE UNION MUST FIRST EXHAUST THE GRIEVANCE PROCEDURE IN THE ALLEGED COLLECTIVE AGREEMENT.

3. ASSUMING BUT WITHOUT DECIDING THAT THERE IS A COLLECTIVE AGREEMENT OR WAS A COLLECTIVE AGREEMENT IN EXISTENCE THE QUESTION AS TO WHETHER OR NOT THE GRIEVOR HAS EXHAUSTED THE GRIEVANCE PROCEDURE, IS A MATTER FOR A BOARD OF ARBITRATION AND IS NOT A MATTER TO BE DECIDED BY THIS BOARD.

4. THE EVIDENCE ADDUCED INDICATES THAT THERE HAD BEEN A COLLECTIVE AGREEMENT IN EXISTENCE BETWEEN THE PARTIES WHICH EXPIRED ON NOVEMBER 30TH, 1966. SUBSEQUENTLY A MEMORANDUM OF AGREEMENT WAS ENTERED INTO BETWEEN THE UNION AND THE EMPLOYER DATED JANUARY 20TH, 1967, WHICH PROVIDES INTER ALIA:

> 1. "EFFECTIVE THE 30TH DAY OF NOVEMBER, 1966, THERE SHALL BE AN ACROSS-THE-BOARD INCREASE OF 10¢ PER HOUR.
>
> 2. EFFECTIVE THE 30TH DAY OF NOVEMBER, 1967, THERE SHALL BE AN ACROSS-THE-BOARD INCREASE OF 6¢ PER HOUR.
>
> 3. EFFECTIVE THE 30TH DAY OF NOVEMBER, 1968, THERE SHALL BE AN ACROSS-THE-BOARD INCREASE OF 7¢ PER HOUR.
>
> 4. THERE SHALL BE AN INCREASE IN THE MONTHLY PAYMENT TO THE WELFARE FUND TO $12.00 PER MONTH PER EMPLOYEE, EFFECTIVE FEBRUARY 1ST, 1967.
>
> 5. EFFECTIVE FEBRUARY 1ST, 1967, THERE SHALL BE AN INCREASE IN DUES TO $4.00 PER MONTH OR $1.00 PER WEEK."

5. THE UNION ADDUCED EVIDENCE WHICH INDICATED THAT THE

MEMORANDUM OF AGREEMENT EXTENDED THE TIME AND CONDITIONS OF THE PRIOR COLLECTIVE AGREEMENT TO NOVEMBER 30TH, 1969, SUBJECT HOWEVER TO THOSE CHANGES IN THE MEMORANDUM. NO EVIDENCE WAS CALLED ON THIS POINT BY THE EMPLOYER.

6. BY LETTER DATED OCTOBER 3RD, 1969, THE UNION WROTE TO THE EMPLOYER AS FOLLOWS:

> "UNDER THE PROVISIONS OF OUR COLLECTIVE AGREEMENT, WE WOULD LIKE TO MEET AT YOUR EARLIEST CONVENIENCE TO NEGOTIATE A NEW AGREEMENT."

7. BY LETTER DATED OCTOBER 8 TH, 1969, AND FORWARDED TO THE UNION THE EMPLOYER REPLIED AS FOLLOWS:

> "IN REFERENCE TO YOUR LETTER OF OCTOBER 3RD, 1969, A MEETING COULD BE ARRANGED ON OCTOBER 15TH OR 16TH OF NEXT WEEK."

8. THE PARTIES MET AND A CONCILIATION OFFICER WAS SUBSEQUENTLY APPOINTED AND ALSO MET WITH THE PARTIES.

9. HAVING REGARD TO THE EVIDENCE WE ARE OF THE OPINION THAT A COLLECTIVE AGREEMENT WAS IN EXISTENCE BETWEEN THE PARTIES AND THAT THE AGREEMENT TERMINATED ON NOVEMBER 30TH, 1969. SINCE THE EMPLOYER ACTED IN ACCORDANCE WITH THE COLLECTIVE AGREEMENT AND THE MEMORANDUM AND ALSO PROCEEDED TO NEGOTIATIONS AND CONCILIATION ARISING FROM THAT COLLECTIVE AGREEMENT AND THE MEMORANDUM HE IS ESTOPPED FROM DENYING THE EXISTENCE OF A COLLECTIVE AGREEMENT.

10. WE ARE FURTHER OF THE OPINION THAT SECTION 59 OF THE LABOUR RELATIONS ACT AFFECTS THE RIGHTS OF THE PARTIES. IN RE HOOGENDOORN AND GREENING METAL PRODUCTS (1967) 62 D.L.R. 167 (CA). LASKIN J.A. STATED AT PAGE 174:

> AS WAS POINTED OUT IN MCKINNON ET AL. V. DOMINION COAL CO. LTD. (1956), 5 D.L.R. (2D) 481; AFFD 8 D.L.R. (2D) 217, 40 M.P.R. 42; AFFD (1958) S.C.R. 202, 12 D.L.R. (2D) 449, PROVISIONS LIKE S. 59 EFFECT A STATUTORY EXTENSION OF THE TERMS OF A COLLECTIVE AGREEMENT FOR THE PERIOD SPECIFIED THEREIN AND TO THE EXTENT TO WHICH ITS TERMS ARE COMPREHENDED BY THE EXTENDING ENACTMENT. THE APPLICANT DOES NOT DENY THE OCCURRENCE OF EVENTS BRINGING S. 59 INTO PLAY, BUT IT IS URGED THAT EVEN IF SUBSTANTIVE TERMS OF THE EXPIRED COLLECTIVE AGREEMENT CONTINUE TO PREVAIL

> (UNLESS CHANGED BY CONSENT OF THE COMPANY AND THE UNION), THE SECTION DOES NOT CONTINUE IN FORCE THE ARBITRATION MACHINERY FOR FINAL DETERMINATION OF GRIEVANCES. THIS IS AN UNTENABLE POSITION, HAVING REGARD TO THE WORDS "RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES" IN S. 59(1) AND HAVING REGARD ALSO IS S. 59(2). WHAT S. 59 SECURES FOR A PRESCRIBED PERIOD IS THE STATUS QUO BETWEEN UNION AND EMPLOYER SO FAR AS CONCERNS THE GOVERNING TERMS OF EMPLOYMENT AND THE DISPUTE-RESOLVING MACHINERY RELATED THERETO AS THESE MATTERS WERE REFLECTED IN ANY THEN EXPIRED COLLECTIVE AGREEMENT WHICH WAS IN FORCE WHEN A RENEWAL NOTICE WAS GIVEN IN ACCORDANCE WITH S. 40.

11. ACCORDINGLY WE RESPECTFULLY REPORT TO THE MINISTER THAT SECTION 59 OF THE LABOUR RELATIONS ACT EFFECTS A STATUTORY EXTENSION OF THE TERMS OF THE COLLECTIVE AGREEMENT FOR THE TIME IN QUESTION.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.

I DISSENT IN PART FROM THE DECISION OF THE MAJORITY. THIS MATTER COMES BEFORE THE BOARD ON A REFERENCE FROM THE MINISTER OF LABOUR UNDER SECTION 79A OF THE ACT.

SECTION 79A(1) STATES:

> "WHERE A REQUEST IS MADE UNDER SECTION 13 OR SUBSECTION 4 OF SECTION 34, THE MINISTER MAY REFER TO THE BOARD ANY QUESTION THAT ARISES THAT IN HIS OPINION RELATES TO HIS AUTHORITY TO MAKE AN APPOINTMENT UNDER ANY SUCH PROVISION THAT IS MENTIONED IN THE REFERENCE, AND THE BOARD SHALL REPORT TO THE MINISTER ITS DECISION ON THE QUESTION.".

PURSUANT TO THE PROVISIONS OF SECTION 79A OF THE LABOUR RELATIONS ACT, THE MINISTER OF LABOUR RELATIONS ACT, THE MINISTER OF LABOUR REFERRED TO THE BOARD THE QUESTION "AS TO WHETHER AT THE TIME OF THE GRIEVANCE, DATED FEBRUARY 5TH, 1970, THERE WAS A COLLECTIVE AGREEMENT BETWEEN THE EMPLOYER AND THE TRADE UNION."

I AM IN AGREEMENT WITH THE MAJORITY THAT A COLLECTIVE AGREEMENT WAS IN EXISTENCE BETWEEN THE PARTIES AND THAT THE AGREEMENT TERMINATED ON NOVEMBER 30TH, 1969.

That being so, I have no difficulty in finding that at the time of the grievance dated February 5th, 1970, there was not a collective agreement between the employer and the trade union.

It follows, therefore, that in answer to the question referred by the Minister, I must respectfully report that such answer is, no.

To go beyond his initial question to the Board, in my opinion, exceeds our jurisdiction and presupposes a question from the Minister which was not requested by him.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

17614-70-R: Local Union 1824, of the International Brotherhood of Painters and Allied Trades (Applicant) v. INDUSTRIAL DRY-WALL LIMITED (Respondent).

3. The Board further finds that all painters and painters' apprentices in the employ of the respondent in the County of Waterloo, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

For the purposes of clarity the Board declares that "painters" includes tapers and sanders.

(May 11th, 1970).

17624-70-R: Labourers International Union of North America Local 493 (Applicant) v. BARRON DIAMOND DRILLING LTD. (Respondent).

2. The respondent filed a reply and lists of employees but failed to file specimen signatures within the time fixed in accordance with The Labour Relations Act and the Board's Rules of Procedure. The lists of employees filed by the respondent contain the names of six persons who were working at a hydro-electric dam site in the Township of South Lorraine on the date of the making of the application and an additional list of employees containing the names of four persons who were working on the date of the making of the application in the Township of South Lorraine in the District of Timiskaming on exploration drilling in connection with mineral exploration and development. Four of the names appearing in the certificates of membership and the applications and receipts correspond to names on the list of six employees filed in respect of the hydro-electric dam site. It has been the practice of the Board, in applications for certifications affecting the construction industry, to consider separately the construction industry and non-construction industry operations of an employer's business operations. See, for example the Fielding Construction Company case, Board File 16975-69-R.

5. The Board further finds that all construction labourers

IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF SOUTH LORRAINE AND THE MUNICIPALITIES IMMEDIATELY ADJACENT THERETO, ALL IN THE DISTRICT OF TIMISKAMING, WHILE ENGAGED IN CONSTRUCTION PROJECTS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE TERM "CONSTRUCTION LABOURERS" INCLUDES "DRILLERS"

(MAY 8TH, 1970).

17715-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, MILLWRIGHTS' LOCAL 1592 (APPLICANT) v. MUSTANG CONTRACTORS LIMITED (RESPONDENT) v. IRON WORKERS DISTRICT COUNCIL OF EASTERN CANADA INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (INTERVENER).

5. THE INTERVENER FILED WITH THE BOARD COPIES OF TWO COLLECTIVE AGREEMENTS. THE FIRST OF THESE COLLECTIVE AGREEMENTS IS BETWEEN THE RESPONDENT AND LOCAL UNIONS 721 AND 736 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE , STRUCTURAL AND ORNAMENTAL IRONWORKERS AND THE OTHER COLLECTIVE AGREEMENT IS BETWEEN THE ASSOCIATION OF EMPLOYEES OF IRONWORKERS, SOUTH WESTERN ONTARIO AND THE SARNIA CONSTRUCTION ASSOCIATION AND LOCAL 700 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS. THESE COLLECTIVE AGREEMENTS WERE EFFECTIVE FROM MAY 1, 1969 UNTIL APRIL 30, 1971. THE BOARD NOTES THAT NONE OF THE PARTIES REQUESTED A HEARING BY THE BOARD. THE BOARD HAS CAREFULLY EXAMINED THESE COLLECTIVE AGREEMENTS AND WHILE THESE COLLECTIVE AGREEMENTS ARE EFFECTIVE WITHIN THE GEOGRAPHIC AREA USUALLY GRANTED BY THE BOARD WITH REFERENCE TO THE JOB SITE IN THIS APPLICATION, THE BOARD FINDS THAT MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES ARE NOT COVERED BY THESE COLLECTIVE AGREEMENTS. THE BOARD THEREFORE, FURTHER FINDS THAT ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(MAY 20TH, 1970).

NE, 1970



NTARIO LABOUR RELATIONS BOARD

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17246-69-R: United Brotherhood of Carpenters and Joiners of America, Local Union 2654 (Applicant) v. K-D Manufacturing Company Limited (Respondent).

Unit: "all employees of the respondent at Kingston, save and except foremen, persons above the rank of foreman, office and sales staff." (82 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 284).

17296-69-R: Canadian Union of Construction Workers (Applicant) v. Mercury Terrazzo Limited (Respondent) v. Local No. 31 Marble Masons, Tile Setters and Terrazzo Mechanics affiliated with the Bricklayers, Masons and Plasterers International Union of America (Intervener) v. Group of Employees (Objectors).

Unit: "all tile setter and terrazzo mechanics and labourers in the employ of the respondent in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (14 employees in the unit). (Having regard to the nature of the respondent's operations and the work performed by the persons in its employ). (For purposes of clarity, the Board declared that all helpers and grinders fall within the classification of labourer.).

(SEE INDEXED ENDORSEMENT PAGE 291).

17301-69-R: Canadian Union of Construction Workers (Applicant) v. Bloor Terrazzo Tile & Mosaic Ltd. (Respondent) v. Local No. 31 Marble Masons, Tile Setters and Terrazzo Mechanics affiliated with the Bricklayers, Masons and Plasterers International Union of America (Intervener) v. Group of Employees (Objectors).

Unit: "all tile setter and terrazzo mechanics and labourers in the employ of the respondent in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in

THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE NATURE OF THE RESPONDENT'S OPERATIONS AND THE WORK PERFORMED BY THE PERSONS IN ITS EMPLOY). (FOR PURPOSES OF CLARITY, THE BOARD DECLARED THAT ALL HELPERS AND IMPROVERS FALL WITHIN THE CLASSIFICATION OF LABOURER.).

(SEE INDEXED ENDORSEMENT PAGE 296).

17322-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. M. LOEB (LONDON) LIMITED, TRADING AS SHOPPERS CITY LICENSED OPERATORS OF K MART FOODS (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT CHATHAM, SAVE AND EXCEPT MEAT DEPARTMENT EMPLOYEES, ASSISTANT STORE MANAGER, HEAD CASHIER, GROCERY DEPARTMENT HEAD, PRODUCE DEPARTMENT HEAD, BAKERY DEPARTMENT HEAD AND STORE MANAGER, AND PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

17392-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE LONDON DAY NURSERY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT DIRECTOR, PERSONS ABOVE THE RANK OF DIRECTOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

17421-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. J. T. BRADLEY & SONS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NAVAN ENGAGED IN DRIVING BULK MILK TANK TRUCKS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17422-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. M. J. LADOUCEUR CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METCALFE ENGAGED IN DRIVING BULK MILK TANK TRUCKS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK

OF FOREMAN AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17423-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. CARLETON CO-OPERATIVE MILK TRANSPORT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MANOTICK ENGAGED IN DRIVING BULK MILK TANK TRUCKS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 305).

17427-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. B. A. THURSTON LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ALMONTE ENGAGED IN DRIVING BULK MILK TANK TRUCKS, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17458-69-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 131, AFL-CIO (APPLICANT) v. H. G. ACRES LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WHO ARE EMPLOYED AT THE SITE OF THE LOWER NOTCH GENERATING STATION PROJECT SITUATED IN THE TOWNSHIP OF SOUTH LORRAINE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CONFIDENTIAL SECRETARY TO THE RESIDENT MANAGER, GEOLOGISTS, ENGINEERS, SECURITY GUARDS, SPECIAL TECHNICIANS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STUDENTS ON A CO-OPERATIVE PROGRAM." (35 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17555-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. SAGA INVESTMENTS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS."

17560-69-R: Dental Technicians Union, Local 43, International Jewelry Workers Union (Applicant) v. Pearce Dental Laboratory Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman and students employed during the school vacation period." (4 employees in the unit).

17585-70-R: Hotel and Restaurant Employees and Bartenders' International Union, Restaurant, Cafeteria and Tavern Employees Union, Local 254 (Applicant) v. Canteen of Canada Limited (Walfoods Ltd.) (Respondent).

Unit: "all employees of the respondent employed at its operations in the Frigidaire Division of General Motors of Canada Limited plant located at 1901 Eglinton Avenue East in the Borough of Scarborough, save and except assistant manager, persons above the rank of assistant manager, office staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (13 employees in the unit).

17602-70-R: Retail Clerks International Association (Applicant) v. Chapples Stores Limited (Respondent).

Unit #1: "all employees of the respondent at Marathon, save and except branch store manager, persons above the rank of branch store manager, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (19 employees in the unit).

Unit #2: "all employees of the respondent at Marathon regularly employed for not more than 24 hours per week and students employed during the school vacation period." (4 employees in the unit).

(See indexed endorsement page 313).

17637-70-R: Canadian Union of Public Employees (Applicant) v. The Public Utilities Commission of the Corporation of the City of Brockville (Respondent).

Unit: "all employees of the respondent, save and except foremen and chief operator, persons above the ranks of foreman and chief operator, office staff, students employed during the school vacation period, students employed on a co-operative training basis with a college or university, and persons regularly employed for not more than 24 hours per week." (24 employees in the unit). (Having regard to the evidence contained in the report of the examiner dated May 28, 1970).

17638-70-R: Labourers' International Union of North America, Local 527 (Applicant) v. Real Binette Construction Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the United Counties of Stormont, Dundas and Glengarry, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 314).

17649-70-R: Canadian Union of Public Employees (Applicant) v. Queen's University at Kingston (Respondent) v. Group of Employees (Objectors).

Unit: "all non-professional library employees of the respondent, save and except supervisors, persons above the rank of supervisor, and persons regularly employed for not more than 24 hours per week." (138 employees in the unit). (Agreement of the parties).

17707-70-R: International Union of District 50, Allied and Technical Workers of the United States and Canada (Applicant) v. Modernfold (Steel) Ltd. (Respondent).

Unit: "all employees of the respondent in the Township of Charlottenburgh in the United Counties of Stormont,Dundas and Glengarry, save and except assistant foremen, persons above the rank of assistant foreman, office and sales staff." (38 employees in the unit).

17725-70-R: Retail Clerks International Association (Applicant) v. Glen Agar I.G.A. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at its retail stores in Metropolitan Toronto regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except store owner." (12 employees in the unit).

17758-70-R: Service Employees' International Union, A.F. of L.-C.I.O.-C.L.C. (Applicant) v. Belleville General Hospital (Respondent) v. Nurses' Association Belleville General Hospital (Intervener).

Unit: "all office and clerical employees of the respondent, save and except supervisors, persons above the rank of supervisor, secretaries to the Administrator, Assistant Administrator, Comptroller, Nursing Administrator, Radiologists, Director of Medical Health and Head Pathologist; confidential personnel assistants, head switchboard operator, persons regularly employed for not more than 24 hours per week, persons covered by a subsisting collective agreement between the respondent and Service

Employees International Union Local 183, persons covered by a subsisting collective agreement between the respondent and International Union of Operating Engineers, persons covered by a Certificate dated May 21st, 1970, to Service Employees International Union, A.F. of L.-C.I.O.-C.L.C., and persons covered by a subsisting collective agreement between the respondent and Nurses' Association Belleville General Hospital." (92 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17767-70-R: Canadian Union of Public Employees (Applicant) v. Corporation of the Township of North Gwillimbury (Respondent).

Unit: "all office and technical employees of the respondent, save and except Clerk-Treasurer, Personnel Manager, persons above the rank of Clerk-Treasurer and Personnel Manager." (10 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17768-70-R: Canadian Union of Public Employees (Applicant) v. North Gwillimbury Memorial Centre Board (Respondent).

Unit: "all employees of the respondent at Keswick employed in its Recreation Centre, save and except Arena Manager, persons above the rank of Arena Manager and persons regularly employed for not more than 24 hours per week." (3 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17772-70-R: International Union of Operating Engineers, Local 793 (Applicant) v. Municipal Corporation of the Town of Elgin (Respondent).

Unit: "all employees of the respondent, save and except foremen, persons above the rank of foreman and office staff." (6 employees in the unit).

17774-70-R: Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. The Great Atlantic and Pacific Tea Company, Limited (Respondent).

Unit: "all meat department employees of the respondent at its retail stores at Renfrew, save and except persons employed for not more than 24 hours per week and students employed during the school vacation period." (2 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES) (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT MEAT DEPARTMENT HEADS ARE INCLUDED IN THE BARGAINING UNIT).

17778-70-R: The United Shoeworkers of America (Applicant) v. Greb Industries Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at its Bauer Division plants on Victoria Street in the City of Kitchener, save and except foremen and foreladies, persons above the rank of foreman and forelady, clerical,

OFFICE AND SALES STAFF, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (253 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17780-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. STRATFORD GENERAL HOSPITAL CORPORATION (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT ACCOUNTANTS, PERSONNEL DEPARTMENT STAFF, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND ONE SECRETARY EACH, TO THE ADMINISTRATOR, ASSISTANT ADMINISTRATOR AND DIRECTOR OF NURSING, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING SCHOOL VACATION PERIODS AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE STRATFORD GENERAL HOSPITAL CORPORATION AND THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 424." (36 EMPLOYEES IN THE UNIT).

17783-70-R: INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) v. ASTRO INDUSTRIES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAWKESBURY, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF." (26 EMPLOYEES IN THE UNIT).

17803-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. MATTHEWS GROUP LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

17805-70-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. NIPISSING DISTRICT ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (50 EMPLOYEES IN THE UNIT).

17806-70-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. TRI-SURE PRODUCTS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, ENGINEERING DRAFTSMEN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (34 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 324).

17807-70-R: Retail and Food Employees Local Union 175, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. The Great Atlantic and Pacific Tea Company, Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at its retail stores at Pembroke, save and except assistant store managers, head cashiers, persons above the ranks of assistant store manager and head cashier, persons regularly employed for not more than 24 hours per week, students employed in off-school hours and during the school vacation period, and meat department employees." (4 employees in the unit). (Having regard to the agreement of the parties). (The Board noted the agreement of the parties that persons classified by the respondent as produce department heads are employees of the respondent included in the bargaining unit).

17833-70-R: Operative Plasterers and Cement Masons International Association of the United States and Canada Local Union No. 124 (Applicant) v. J. P. Acoustique Enrg. (Respondent).

Unit: "all plasterers' and plasterers' apprentices in the employ of the respondent in The Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit). (For the purposes of clarity the Board declared that drywall tapers are included in the bargaining unit).

17838-70-R: International Union of Operating Engineers, Local 793 (Applicant) v. Dulepka Equipment Rentals Limited (Respondent).

Unit: "all employees of the respondent within the Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

17842-70-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Chrysler Canada Ltd., Ajax Trim Plant (Respondent).

Unit: "all office and clerical employees of the respondent at Ajax, save and except supervisors and those above the rank of supervisor, secretary to the plant manager, secretary to the manufacturing manager, bookkeeping clerk, budget and financial analyst, programmer, plant engineer B, all employees in the personnel department and employees engaged in industrial engineering." (28 employees in the unit). (Having regard to the agreement

OF THE PARTIES).

17843-70-R: Fur, Leather, Shoe & Allied Workers' Union, Local 82, of the Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO, CLC (Applicant) v. Lorraine Shoe Co. Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (52 employees in the unit).

17865-70-R: Canadian Union of Construction Workers (Applicant) v. Di Battista Construction Forming Ltd. (Respondent).

Unit: "all employees of the respondent employed in its yard in Metropolitan Toronto, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

17867-70-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Canadian Dredge & Dock Limited (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit). (Having regard to the representations of the parties). (The Board declared for the purposes of clarity that "pile drivers" who are not covered by a subsisting collective agreement between the respondent and the intervener dated June 2, 1969, are included in the bargaining unit).

17868-70-R: United Rubber, Cork, Linoleum and Plastic Workers of America AFL CIO CLC (Applicant) v. Goodyear Tire and Rubber Company of Canada Limited (Respondent).

Unit: "all employees of the respondent at its Crystophane Plant No. 2 at Mississauga, save and except foremen, persons above the rank of foreman, office and sales staff." (7 employees in the unit). (Having regard to the agreement of the parties).

17878-70-R: International Association of Bridge, Structural & Ornamental Iron Workers, Local 721 (Applicant) v. Direct Forming Limited (Respondent).

Unit: "all reinforcing rodmen in the employ of the respondent in Prince Edward County and the Townships of Lake, Tudor, Grimsthorpe, Marmora, Madoc, Elzevir, Rawdon, Huntingdon, Hungerford, Sidney, Thurlow and Tyendinaga in the County of Hastings and the Townships of Percy, Seymour, Cramahe, Brighton and Murray in the County of Northumberland, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

17879-70-R: Nurses' Association St. Joseph's Hospital Hamilton (Applicant) v. St. Joseph's Hospital, Hamilton (Respondent) v. Group of Employees (Objectors).

Unit: "all lay registered and graduate nurses employed by the respondent engaged in nursing care, save and except head nurses, persons above the rank of head nurse and persons regularly employed for not more than twenty four hours per week." (233 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17880-70-R: International Brotherhood of Painters & Allied Trades Local Union 1891 (Applicant) v. Acme Lathing Company Limited (Respondent).

Unit: "all painters and painters' apprentices in the employ of the respondent in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit). (FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT "PAINTERS" INCLUDE DRYWALL TAPERS).

17881-70-R: International Association of Bridge, Structural and Ornamental Ironworkers Local Union 721 (Applicant) v. Suto Steel Limited (Respondent).

Unit: "all reinforcing rodmen in the employ of the respondent in Prince Edward County and the Townships of Lake, Tudor, Grimsthorpe, Marmora, Madoc, Elzevir, Rawdon, Huntingdon, Hungerford, Sidney, Thurlow and Tyendinaga in the County of Hastings and the Townships of Percy, Seymour, Gramahe, Brighton and Murray in the County of Northumberland, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

17882-70-R: International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 721 (Applicant) v. Rig-Fab Steel Ltd. (Respondent).

Unit: "all ironworkers in the employ of the respondent in the Township of Hope in the County of Durham and the Townships of South Monaghan, Hamilton, Haldimand and Alnwick in the County of Northumberland, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

17885-70-R: United Brotherhood of Carpenters and Joiners of America, Millwrights' Local 1592 (Applicant) v. W.A. Stephenson Construction Company Limited (Respondent).

UNIT: "ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

17886-70-R: INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) v. MISSY'S CHOICE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF." (32 EMPLOYEES IN THE UNIT).

17887-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. C. A. JOHANNSEN & SONS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

17892-70-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION #1450 (APPLICANT) v. EMERY ENGINEERING & CONTRACTING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

17893-70-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. OTTAWA WEST END VILLA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 2716 RICHMOND ROAD, OTTAWA, SAVE AND EXCEPT SUPERVISOR, PERSONS ABOVE THE RANK OF SUPERVISOR, REGISTERED NURSES, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (54 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17895-70-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. TRAVELINER COMPANY (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (42 EMPLOYEES IN THE UNIT).

17900-70-R: United Brotherhood of Carpenters and Joiners of America, Local Union #2307 (Applicant) v. Real Binette Construction Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in The Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

17902-70-R: Labourers' International Union of North America, Local 183 (Applicant) v. Framat Construction Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent within Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen, persons above the rank of non-working foreman and construction labourers engaged in the building projects." (5 employees in the unit).

17903-70-R: General Truck Drivers Union Local 879 (Applicant) v. National Slag Limited (Respondent).

Unit: "all employees of the respondent at Hamilton, save and except foremen and head scale man, persons above the rank of foreman and head scale man, watchmen, laboratory technicians, students employed during the school vacation period, and persons regularly employed for not more than 24 hours per week." (35 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

17904-70-R: Labourers' International Union of North America, Local 183 (Applicant) v. Modular Precast Concrete Structures Limited and Company (Respondent).

Unit: "all employees of the respondent in Markham Township in the County of York, save and except foremen, persons above the rank of foreman, office, clerical, sales and engineering staff." (4 employees in the unit).

17908-70-R: International Brotherhood of Pulp, Sulphite and Paper Mill Workers, A.F.L.-C.I.O.-C.L.C. (Applicant) v. Continental Can Company of Canada Ltd. (Respondent).

Unit: "all employees of the respondent at Guelph, save and except production supervisors, persons above the rank of production supervisor, office, clerical and sales staff and field service representatives." (32 employees in the unit).

17913-70-R: Local Union No. 304, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO-CLC (Applicant) v. Miles Laboratories, Ltd. (Respondent).

Unit: "all employees of the respondent at its plant at 367 Lakeshore Blvd. East, Toronto, save and except foremen and persons above the rank of foreman, office staff and chief Chemist." (11 employees in the unit).

17915-70-R: Hotel and Restaurant Employees and Bartenders' International Union, Restaurant, Cafeteria and Tavern Employees' Union, Local 254 (Applicant) v. Crawley & McCracken Company Limited (Respondent).

Unit: "all employees of the respondent at its project #1575, Fort Francis, save and except Camp Manager, Assistant Camp Manager, Commissary Manager, Snack Bar Manager, Grocery Store Manager and Chef, persons above the ranks of Camp Manager, Assistant Camp Manager, Commissary Manager, Snack Bar Manager, Grocery Store Manager and Chef, and office staff." (2 employees in the unit).

17926-70-R: Labourers' International Union of North America, Local 527 (Applicant) v. Real Binette Construction Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in The Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

17927-70-R: Council of Concrete-Forming Trade Unions (Applicant) v. Skyline Forming Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices, all cement masons and cement masons' apprentices, all construction labourers and all reinforcing rodmen in the employ of the respondent in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (20 employees in the unit).

17930-70-R: International Union of Operating Engineers, Local 796 (Applicant) v. St. Joseph's General Hospital (Respondent).

Unit: "all stationary engineers and persons primarily engaged as their helpers in the employ of the respondent at its hospital in Little Current, save and except chief engineer and persons above the rank of chief engineer." (5 employees in the unit).

17931-70-R: International Union of Operating Engineers, Local 796 (Applicant) v. Smiths Falls Public Hospital (Respondent).

Unit: "all stationary engineers and persons primarily engaged as their helpers employed in the power house of the respondent at Smiths Falls, save and except chief engineer and persons above the rank of chief engineer." (4 employees in the unit).

17933-70-R: Labourers International Union of North America Local 837 (Applicant) v. Raney Brady Contractors (Respondent).

Unit: "all construction labourers in the employ of the respondent in The Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (14 employees in the unit).

17934-70-R: Canadian Union of Public Employees (Applicant) v. Kapuskasing District Roman Catholic Separate School Board (Respondent).

Unit: "all employees of the respondent engaged in maintenance, services and plant operations, save and except building superintendent, persons above the rank of building superintendent, office staff, persons regularly employed for not more than twenty-four hours per week and students employe during the school vacation period." (13 employees in the unit). (having regard to the agreement of the parties).

17943-70-R: Laundry, Dry Cleaning & Dye House Workers' International Unio Local 351 (Applicant) v. Allied Laundries Limited (Respondent).

Unit: "all employees of the respondent in its plant at Metropolitan Toronto, save and except foremen, persons above the rank of foreman, super visors, driver-salesman, sales and office staff and members of the owner's family." (11 employees in the unit). (having regard to the agreement of the parties).

17944-70-R: Retail Clerks International Association (Applicant) v. Shop-Easy, Division of Westfair Foods Ltd. (Respondent).

Unit: "all employees of the respondent in its stores at Thunder Bay regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except store managers, persons above the rank of store manager, and persons covered by the subsisting collective agreement between the applicant and the respondent." (5 employees in the unit).

17947-70-R: Wood, Wire and Metal Lathers' International Union, Local 423 (Applicant) v. Lafontaine & Morrissette Drywall (Respondent) v. United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Intervener #1) v. Operative Plasterers and Cement Masons International Association of the United States and Canada, Local 124, Ottawa-Hull (Intervener #2).

Unit: "all lathers and lathers' apprentices in the employ of the respondent in The Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

17953-70-R: Local Union No. 7, Marble Masons, Tile Setters and Terrazzo Workers affiliated with the Bricklayers, Masons and Plasterers International Union of America (Applicant) v. Italceramics Imports Co. (Respondent).

Unit: "all tile setters in the employ of the respondent in The Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

17954-70-R: Council of Concrete-Forming Trade Unions (Applicant) v. Mutamp Investments Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices, all construction labourers and all reinforcing rodmen in the employ of the respondent in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

17957-70-R: International Brotherhood of Painters & Allied Trades, Local Union 1891 (Applicant) v. Durable Drywall Limited (Respondent).

Unit: "all painters and painters' apprentices in the employ of the respondent in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit). (For the purposes of clarity the Board declared that "painters" includes tapers.)

17973-70-R: Labourers' International Union of North America, Local 527 (Applicant) v. Calor Mechanical Contractors (Respondent).

Unit: "all construction labourers in the employ of the respondent in The Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

17975-70-R: International Union of Operating Engineers, Local 793 (Applicant) v. Industrial Formwork Limited (Respondent).

Unit: "all employees of the respondent in The Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

17997-70-R: Christian Trade Unions of Canada (Local 6) (Applicant) v. Schaible Electric Ltd. (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the County of Wentworth and the Township of Nassagaweya and the Town of Burlington in the County of Halton, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit). (Having regard to the provisions of section 6(1) of the Labour Relations Act).

Application Certified Subsequent to Pre-Hearing Vote

17818-70-R: International Chemical Workers Union (Applicant) v. Du Pont of Canada Limited (Respondent) v. International Union of District 50, U.M.W.A. (Intervener).

Unit: "all employees of the respondent at its paint manufacturing plant located in Ajax, Ontario known as its Ajax Works, save and except foremen, persons above the rank of foreman, process, technical, sales development, colour development and control employees, nurse, office, clerical and sales staff and security guards." (99 employees in the unit). (Having regard to the agreement and representations of the parties).

Number of names of persons on revised voters' list		95
Number of persons who cast ballots	95	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	82	
Number of ballots marked in favour of intervener	12	

Application Certified Subsequent to Post-Hearing Vote

16628-69-R: Retail Clerks International Association (Applicant) v. Canada Safeway Limited (Respondent) v. Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Intervener).

Unit: "all employees of the respondent at Brampton, save and except assistant store manager, bakery manager, meat manager and persons above the rank of assistant store manager, bakery manager and meat manager."

Number of names of persons on revised voters' list		73
Number of persons who cast ballots	73	
Number of ballots marked in favour of applicant	38	
Number of ballots marked against applicant	35	

(SEE INDEXED ENDORSEMENT PAGE 282).

Applications for Certification Dismissed During June

No Vote Conducted

17321-69-R: United Steelworkers of America (Applicant) v. V.C.A. Manufacturing of Canada Limited (Respondent). (32 employees).

(SEE INDEXED ENDORSEMENT PAGE 301).

17603-70-R: Laundry, Dry Cleaning and Dye House Workers' International Union - Local 351 (Applicant) v. Manor Cleaners Limited (Respondent).

Unit: "all employees of the respondent in its Grantham Shopping Plaza plant and store in St. Catharines including office and counter employees and employees in the Drapery Department, save and except foremen, those above the rank of foreman and supervisors, route salesmen, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (19 employees in the unit).

(Having regard to the agreement of the parties). (For the purposes of clarity the Board noted the agreement of the parties that the commission salesmen are excluded from the bargaining unit).

17655-70-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. Moir Construction Company Limited (Respondent). (12 employees).

(SEE INDEXED ENDORSEMENT PAGE 317).

17697-70-R: The Regional Municipality of Niagara Employees Association (Applicant) v. The Regional Municipality of Niagara (Respondent) v. Canadian Union of Public Employees (Intervener). (57 employees).

17748-70-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union 91, affiliated with the International Brotherhood of Teamsters, Chauffeurs Warehousemen and Helpers of America (Applicant) v. Domtar Fine Papers Ltd. (Respondent). (5 employees).

17798-70-R: United Brotherhood of Carpenters & Joiners of America, Local Union #1450, Peterborough Ontario (Applicant) v. Richard & B. A. Ryan Ltd. Contractors (Respondent). (4 employees).

17804-70-R: United Brotherhood of Carpenters & Joiners of America Local Union #1450, Peterborough, Ontario (Applicant) v. Ontario Forming (Respondent). (4 employees).

17829-70-R: International Association of Bridge, Structural and Ornamental Ironworkers Local Union 721 (Applicant) v. M F T Windows Limited (Respondent). (2 employees).

17830-70-R: Labourer's International Union of North America Local 1089 (Applicant) v. G. M. Gest Limited (Respondent) v. International Association of Bridge, Structural & Ornamental Iron Workers, Local Union No. 700, 2362 Central Ave., Windsor 19, Ontario (Intervener #1) v. Labourers' International Union of North America, Local 183 (Intervener #2). (7 employees).

17832-70-R: Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 124 (Applicant) v. Carleton Formwork Limited (Respondent). (3 employees).

17834-70-R: Local 804 International Brotherhood of Electrical Workers (Applicant) v. ITT Canada Limited (Respondent) v. Group of Employees (Objectors). (151 employees).

(SEE INDEXED ENDORSEMENT PAGE 330).

17856-70-R: Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 48 (Applicant) v. H. L. Blachford Limited (Respondent). (4 employees).

17858-70-R: International Brotherhood of Electrical Workers Local Union 1687 (Applicant) v. H. Allarie & Sons Limited (Respondent). (7 employees).

17910-70-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Rayan Office Services Limited, carrying on business under the firm name and style of Interflex Laboratory (Respondent). (2 employees).

17942-70-R: Laundry, Dry Cleaning & Dye House Workers' International Union, Local 351 (Applicant) v. Topper Linen Supply Limited (Respondent). (no employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

17222-69-R: International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO, CLC (Applicant) v. Seven-Up (Ontario) Limited (Respondent).

Voting Constituency: "all employees of the respondent at Metropolitan Toronto, save and except foremen, route supervisors, persons above the rank of foreman and route supervisor, and office staff." (79 employees).

Number of names of persons on revised voters' list		64
Number of persons who cast ballots	63	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	32	
Number of ballots marked against applicant	30	

Certification Dismissed Subsequent to Post-Hearing Vote

17090-69-R: United Rubber, Cork, Linoleum & Plastic Workers of America, AFL-CIO-CLC (Applicant) v. Whitman Publishing-Golden Press of Canada Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of therespondent at Galt, save and except foremen, foreladies, persons above the rank of foreman and forelady, office and sales staff, persons regularly employed for not more than 24 hours per week and students employedduring the school vacation period." (51 employees in the unit).

Number of names of persons on revised voters' list	39

Number of persons who cast ballots		39
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	33	

17188-69-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union 91, Affiliated with the International Brotherhood of Teamsters, Chauffeurs Warehousemen and Helpers of America (Applicant) v. Trudeau Motors Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Belleville engaged in motor vehicle repair services, save and except foremen, persons above the rank of foreman, office and sales staff, persons employed for not more than 24 hours per week and students employed during the school vacation period. (35 employees in the unit).

Number of names of persons on revised voters' list		31
Number of persons who cast ballots		31
Ballots segregated and not counted	3	
Number of ballots marked in favour of applicant	9	
Number of ballots marked against applicant	19	

17248-69-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Prince Edward Dairies (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Picton, save and except foremen, persons above the rank of foreman, office staff and students employed during the school vacation period." (5 employees in the unit).

Number of names of persons on voters' list		5
Number of persons who cast ballots		5
Number of ballots marked in favour of applicant	0	
Number of ballots marked against applicant	5	

17297-69-R: Canadian Union of Construction Workers (Applicant) v. Perfect Tile Company (Respondent) v. Local No. 31 Marble Masons, Tile Setters and Terrazzo Mechanics affiliated with the Bricklayers, Masons and Plasterers International Union of America (Intervener).

UNIT: "ALL TILE SETTERS AND ALL EMPLOYEES ENGAGED IN THE INSTALLATION OF RESILIENT FLOORING IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		6
NUMBER OF PERSONS WHO CAST BALLOTS	6	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4	

17510-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. F. W. WOOLWORTH CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY SAVE AND EXCEPT ASSISTANT STORE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, RESTAURANT MANAGER, OFFICE STAFF, PERSONNEL SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS EMPLOYED IN THE WOOLCO DIVISION." (107 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		106
NUMBER OF PERSONS WHO CAST BALLOTS	106	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	52	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	54	

17530-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 91, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. EADY MOTORS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RENFREW, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	5

Number of persons who cast ballots		5
Number of ballots marked in favour of applicant	0	
Number of ballots marked against applicant	5	

17862-70-R: Teamsters' Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers (Applicant) v. W. D. Morrish & Son Limited (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff" (19 employees in the unit).

Number of names of persons on revised voters' list		24
Number of persons who cast ballots	24	
Number of ballots marked in favour of applicant	7	
Number of ballots marked against applicant	17	

17741-70-R: International Union of Operating Engineers, Local 796 (Applicant) v. Kemptville District Hospital (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at its hospital in Kemptville, save and except office staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, (department heads) persons above the rank of supervisor, persons regularly employed for not more than 24 hours per week, students employed during school vacations, plant superintendent, assistant plant superintendent and persons covered by a subsisting collective agreement between the respondent and International Union of Operating Engineers Local 796 and persons covered by Laboratory and Technicians' Associations." (42 employees in the unit).

Number of names of persons on revised voters' list		40
Number of persons who cast ballots	42	
Ballots segregated and not counted	2	
Number of ballots marked in favour of applicant	20	
Number of ballots marked against applicant	20	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JUNE

17845-70-R: Canadian Union of Construction Workers (Applicant) v. Di Battista Construction Forming Ltd. (Respondent) v. International Union of Operating Engineers Local 793 (Intervener #1) v. Council of Concrete-Forming Trade Unions (Intervener #2). (11 employees).

17859-70-R: Labourers International Union of North America Local 493 (Applicant) v. Standard Paving Company (North Bay Division) (a division of S. P. & M. Materials Limited) (Respondent). (20 employees).

17860-70-R: Labourers International Union of North America, Local 493 (Applicant) v. Standard Paving Ltd. (Respondent). (8 employees).

17861-70-R: Labourers International Union of North America, Local 493 (Applicant) v. Standard Paving Ltd. (Respondent). (4 employees).

17866-70-R: Labourers International Union of North America Local 493 (Applicant) v. L. J. Brouse Construction (Sudbury) Ltd. (Respondent). (3 employees).

17872-70-R: Local Union 1739 of the International Brotherhood of Electrical Workers, Barrie, Ontario (Applicant) v. Indusmin Limited (Respondent) v. United Cement, Lime and Gypsum Workers International Union, C. L. C. (Intervener). (13 employees).

17891-70-R: Laborers' International Union of North America Local Union No. 597 (Applicant) v. Emery Engineering & Contracting Company Limited (Respondent). (7 employees).

17905-70-R: Labourers International Union of North America Local 837 (Applicant) v. G. M. Gest Limited (Utilities Division) (Respondent). (12 employees).

17964-70-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1190 (Applicant) v. L & R Carpentry (Respondent). (3 employees).

17987-70-R: Retail and Commerce Employees' Union (Applicant) v. Steinberg's Limited (Respondent) v. Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Intervener) v. Retail and Food Employees Local Union 175, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Intervener) v. United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Intervener) v. Retail Clerks Union Local No. 486 (Intervener). (724 employees).

17995-70-R: Local #10, Marble Setting, Tile & Terrazzo Workers, and Cement Finishers Affiliated with the Bricklayers Masons & Plasterers International Union of America (Applicant) v. Seaway Tile Co. Box 34 Kingston Ont. (Respondent). (3 employees).

18001-70-R: Labourers' International Union of North America, Local 527 (Applicant) v. J. R. Couture Limited (Respondent). (7 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING JUNE

17515-69-R: Karl Kruger (Applicant) v. International Brotherhood of Firemen & Oilers (Respondent) v. The Ontario & Minnesota Pulp & Paper Co. Ltd. (Employer). (GRANTED).

Voting Constituency: "all employees of The Ontario & Minnesota Pulp & Paper Co. Ltd. at Fort Frances Mill, engaged in the installation, maintenance, dismantling and assembling of all pneumatic, hydraulic and fluidic instrumentation in the Fort Frances Mill." (48 employees).

The Board further stated in its decision dated April 21st, 1970, in paragraph 5:

> The voting constituency shall be governed by paragraph 201. 1 of the collective agreement between the respondent and The Ontario & Minnesota Pulp & Paper Co. Ltd. Fort Frances Division, dated the 1st day of May, 1968, and shall include those employees covered by that collective agreement and governed by the following provisions in article 201.1.
>
> (i) The dividing point between this jurisdiction and the jurisdiction of other mill maintenance unions shall be in accordance with presently established jurisdictional lines.
>
> (ii) The Union shall have jurisdiction over operating positions in the steam plant (including Recovery Boilers) and such maintenance and repairs in the mill as is presently recognized under the maintenance classifications in Appendix A.
>
> (iii) The Union shall have jurisdiction over crane operations, section men and woodroom-screenroom oilers in accordance with present practice.

Number of names of persons on revised voters' list		42
Number of persons who cast ballots	41	
Number of ballots marked in favour of respondent	5	
Number of ballots marked against respondent	36	

17607-70-R: Howard Plumstead and Lionel Rancourt (Applicants) v. United Cement, Lime and Gypsum Workers International Union (Respondent) v. National Slag Limited (Intervener). (GRANTED).

Unit: "all employees of the National Slag Limited at the Windermere Road plant and at Dominion Foundries and Steel Limited, at Hamilton, save and except foremen, persons above the rank of foreman, scalemen, watchmen, laboratory technicians, students hired for the summer vacation period, office and sales staff." (36 employees in the unit).

Number of names of persons on revised voters' list		34
Number of persons who cast ballots	34	
Number of ballots marked in favour of respondent	4	
Number of ballots marked against respondent	30	

17646-70-R: John W. Titchner and Bruce E. Cain (Applicants) v. The International Woodworkers of America and its Local (2-368) (Respondent) v. Consolidated-Bathurst Packaging Limited (Employer). (GRANTED).

Unit: "all office employees at its plant at 1155 Talbot Street, St. Thomas, Ontario, save and except supervisors and persons above the rank of Supervisors, Planning Co-Ordinator, Industrial Engineers, Technical Personnel, Senior Secretary to management personnel, outside Sales Staff, full time employees of the Personnel Department, Janitors, or persons represented by other certified bargaining agents." (16 employees in the unit).

Number of names of persons on voters' list		17
Number of persons who cast ballots	17	
Number of spoiled ballots	1	
Number of ballots marked in favour of respondent	1	
Number of ballots marked against respondent	15	

17679-70-R: Mrs. Muriel Angle (Applicant) v. Textile Workers Union of America 1731 (Respondent). (109 employees). (DISMISSED).

17792-70-R: Circle K Employees Association (Applicant) v. The Lumber and Sawmill Workers' Union, Local 2995, of the United Brotherhood of Carpenters and Joiners of America (Respondent) v. Kokotow Lumber Limited (Intervener). (86 employees). (WITHDRAWN).

17794-70-R: Francis A. Hiner (Applicant) v. Central Ontario District Council, United Brotherhood of Carpenters and Joiners of America (Respondent) v. Andre Construction Company (Intervener). (1 employee). (DISMISSED).

17815-70-R: Leo George Como (Applicant) v. Hotel and Restaurant Employees and Bartenders International Union A.F.L.-C.I.O.-C.L.C. Local 197 (Respondent) v. Nick Masney Hotels Limited (Intervener). (9 employees). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 332).

17831-70-R: The Burlington Printing Company Limited (Applicant) v. The Toronto Newspaper Guild (Local 87) chartered by The American Newspaper Guild (CLC, AFL-CIO) (Respondent). (11 employees). (GRANTED).

17852-70-R: Armco Canada Ltd. (formerly known as Armco Drainage & Metal Products of Canada Ltd.) (Applicant) v. Labourers' International Union of NorthAmerica, Local 183 (Respondent). (10 employees). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 334).

17890-70-R: Stationary Engineers at Canadian Canners Ltd., Plant #22, St. Davids, Ont. (Applicant) v. International Union of Operating Engineers Local 772 (Respondent). (4 employees). (GRANTED).

17897-70-R: Tom Vaughan - Representing the employees of Super City Discount Foods Ltd. (Applicant) v. Retail Clerks Union Local 206 Chartered by The Retail Clerks International Association (Respondent). (21 employees). (WITHDRAWN).

17916-70-R: Charters Publishing Company, Limited (Applicant) v. Warehousemen and Miscellaneous Drivers' Union, Local 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent). (5 employees). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 336).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING JUNE

17777-70-R: The Brotherhood of Painters, Decorators and Paperhangers of America Local Union # 1819 125 Albert St. Oshawa, Ontario (Applicant) v. United Electrical, Radio & Machine Workers of America Local 527, 203 Reid Street, Peterborough, Ont. (Respondent) v. Canadian Pittsburgh Industries Limited (Employer). (GRANTED).

17828-70-R: International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) (Applicant) v. Hard Metals (Canada) Limited (Respondent) v. The Association of Employees of Hard Metals (Canada) Limited (Predecessor Trade Union).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING JUNE

17373-69-U: Inmont Canada Limited (Applicant) v. Employees of the Applicant as Listed on the Attached Document (Respondents). (WITHDRAWN).

17374-69-U: Inmont Canada Limited (Applicant) v. Employees of the Applicant as Listed on the Attached Document (Respondents). (WITHDRAWN).

17875-70-U: Kokotow Lumber Limited (Applicant) v. Lucien Fournier, Robert Fournier, Paul Fournier, Aime Fortier, Felix Giroux, Benoit Dallaire, Alphe Saindon, Albert LaMarche, Gerry LaMarche, Leo Richard, Doug Metson, Jules Lacourse (Respondents). (WITHDRAWN).

17937-70-U: Brown's Concrete Products Limited (Applicant) v. Teamsters' Local Union No. 230 Ready-Mix Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers (Respondent). (WITHDRAWN).

17938-70-U: Brown's Concrete Products Limited (Applicant) v. Regent Racine, Elvio Perelli, Denis Cadieux, Richard Storms, Larry Ballance and John Desroches (Respondents). (WITHDRAWN).

17982-70-U: Fraser-Brace Engineering Company Limited, Falconbridge, Ontario (Applicant) v. K. Batyski et. al. (Respondents). (WITHDRAWN).

17983-70-U: Fraser-Brace Engineering Co. Ltd., Falconbridge, Ontario (Applicant) v. Gordon Affleck et. al. (Respondents). (WITHDRAWN).

17984-70-U: Fraser-Brace Engineering Company Limited Falconbridge, Ontario (Applicant) v. Gordon Affleck, Et. Al. (Respondents). (WITHDRAWN).

17985-70-U: Fraser-Brace Engineering Company Limited Falconbridge, Ontario (Applicant) v. K. Batyski Et. Al. (Respondents). (WITHDRAWN).

18006-70-U: Mechanical Contractors Association of Toronto for and on behalf of each of its present members on the list attached hereto (Applicant) v. Local 46, The United Association of Journeymen and Apprentices of The Plumbing and Pipe Fitting Industry of The United States and Canada (Respondent). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JUNE

17375-69-U: Inmont Canada Limited (Applicant) v. David Hope, William Simpson (Respondents). (WITHDRAWN).

17376-69-U: Inmont Canada Limited (Applicant) v. Employees of the Applicant as Listed on the Attached Document (Respondents). (WITHDRAWN).

17377-69-U: Inmont Canada Limited (Applicant) v. Employees of the Applicant as Listed on the Attached Document (Respondents). (WITHDRAWN).

17378-69-U: Inmont Canada Limited (Applicant) v. David Hope William Simpson (Respondents). (WITHDRAWN).

17432-69-U: International Association of Machinists and Aerospace Workers and Local Lodge 1246 (Applicants) v. Franklin Manufacturing Company (Canada) Limited (Respondent). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 341).

17562-69-U: The Canadian Union of Operating Engineers (Applicant) v. Hotel Dieu Hospital, St. Catharines (Respondent). (GRANTED).

17568-69-U: Sarnia Typographical Union No. 837 (Applicant) v. Canadian Printing Company, Sarnia Ltd. (Respondent). (WITHDRAWN).

17669-70-U: Belmont Plastering Company (App licant) v. Angelo Burigana & Charles W. Irvine (Respondents). (DISMISSED).

17745-70-U: The Mechanical Contractors Association - Zone 7 on its own behalf and on behalf of
Adam-Clark Company Limited,

BENNETT & WRIGHT CONTRACTORS LIMITED,
BLACK & MACDONALD,
CANADIAN COMSTOCK COMPANY LIMITED,
CENTRAL MECHANICAL CONTRACTORS (GUELPH) LTD,
DUNDAS PLUMBING & MECHANICAL CONTRACTORS,
ENGLISH & MOULD LIMITED,
GROFF PLUMBING & HEATING LIMITED,
S. I. GUTTMAN LIMITED,
MCKENNA BROTHERS LIMITED,
NELCO (KITCHENER) LIMITED,
O-K WELDING (KITCHENER) LIMITED,
W. H. PEACOCK PLUMBING & HEATING LIMITED,
A. J. REINHARDT LIMITED,
S. E. ROZELL & SONS,
SCOTT'S PLUMBING & HEATING LIMITED,
STEEN MECHANICAL CONTRACTORS LIMITED,
SUTHERLAND-SCHULTZ LIMITED,
WATKINS & CHATTERSON MECHANICAL CONTRACTORS,
WATTS & HENDERSON LIMITED,
WELD-ALL SERVICE LIMITED, (APPLICANT) v. JACK PORTER, A. FIELD, R. STEEB, G. BLAKE, A. SCHILL AND THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL UNION 527 (RESPONDENTS). (GRANTED).

17920-70-U: HONEYWELL CONTROLS LIMITED AND THE PNEUMATIC CONTROL SYSTEMS COUNCIL (APPLICANTS) v. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

17939-70-U: BROWN'S CONCRETE PRODUCTS LIMITED (APPLICANT) v. REGENT RACINE, ELVIO PERELLI, DENIS CADIEUS RICHARD STORMS, LARRY BALLANCE AND JOHN DESROCHES (RESPONDENTS). (WITHDRAWN).

17940-70-U: BROWN'S CONCRETE PRODUCTS LIMITED (APPLICANT) v. TEAMSTERS UNION LOCAL 230 READY-MIX BUILDING SUPPLY HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING JUNE

17313-69-U: THOMAS FEENEY AND PETER RENNIE (COMPLAINANTS) v. METROPOLITAN SEPARATE SCHOOL BOARD (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 345).

17316-69-U: International Woodworkers of America (Complainant) v. Ideal Woodworking Limited (Respondent). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 346).

17326-69-U: Ray Brigates and Mel Carroll (Complainants) v. Wilson Truck Lines Ltd. (Respondents). (WITHDRAWN).

17635-70-U: Canadian Brotherhood of Railway, Transport and General Workers (Complainant) v. Pritchard & Taylor Ltd. (Respondent). (WITHDRAWN).

17685-70-U: International Woodworkers of America (Complainant) v. Pyramid Homes (Eastern) Limited (Respondent). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 351).

17726-70-U: United Electrical, Radio and Machine Workers of America (UE) (Complainant) v. Canadian Westinghouse Company Limited (Respondent). (WITHDRAWN).

17769-70-U: International Union of District 50, Allied and Technical Workers of the United States and Canada (Complainant) v. Richmond Machine Tool & Die Casting Co. Ltd. (Respondent). (WITHDRAWN).

17779-70-U: Local Union No. 132 of the United Rubber, Cork, Linoleum and Plastic Workers of America, A.F.L., C.I.O., C.L.C. (Complainant) v. Dunlop of Canada Limited and Scott-Atkinson Only International Ltd. (Respondents). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 353).

17793-70-U: International Woodworkers of America (Complainant) v. Pyramid Homes (Eastern) Limited (Respondent). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 357).

17802-70-U: Walter Zampolin (Complainant) v. Service Employees International Union, Local 204 (Respondent). (WITHDRAWN).

17854-70-U: Service Employees International Union (Complainant) v. Amalgamated Ambulance Service, Reliable Ambulance Service, Bell Ambulance Service and William M. Gordon (Respondents). (WITHDRAWN).

17883-70-U: United Steelworkers of America (Complainant) v. Keystone Generator & Starter Rebuilders Limited (Respondent). (WITHDRAWN).

17884-70-U: Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Complainant) v. Canada Safeway Limited (Respondent). (WITHDRAWN).

17909-70-U: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Complainant) v. C. A. Johannsen & Sons Ltd. (Respondent). (WITHDRAWN).

17976-70-U: Guenter Schwieger (Complainant) v. The Carpenters District Council of Toronto and Vicintiy, hereinafter referred to as "The Council", and Basil Clark, Secretary of the said Council, and the following members of a purported trial committee appointed by the said Council; G. DeWildt, S. Hutsulak, J. Hawkins, M. Whalen, Phillip Robichaud (Respondents). (WITHDRAWN).

17977-70-U: Guenter Schwieger (Complainant) v. The Carpenters District Council of Toronto and Vicinity, hereinafter referred to as "The Council", and Basil Clark, Secretary of the said Council, and the following members of a purported trial committee appointed by the said Council; G. DeWildt, S. Hutsulak, J. Hawkins, M. Whalen, Phillip Robichaud, (Respondents). (WITHDRAWN).

17978-70-U: Taxi Workers Committee (Complainant) v. The Companies and Manager Operating as "Highfiel Garage" 1355 Gerrard St. E. (Respondent). (WITHDRAWN).

APPLICATIONS UNDER SECTION 47a DISPOSED OF DURING JUNE

16997-69-M: Trenton Construction Workers Association, Local No. 52, affiliated with the Christian Labour Association of Canada (Applicant) v. Roner Construction Limited ; Miron-Wiggers Construction Limited; United Brotherhood of Carpenters and Joiners of America, Local Union 1071; Labourers International Union of North America Local 597 (Respondents). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 359).

17549-69-M: The Welland County Roman Catholic Separate School Board (Applicant) v. Canadian Union of Public Employees, and Board of Trustees of the Roman Catholic Separate Schools for the City of Welland (Respondents). (GRANTED).

Unit: "all employees of the applicant engaged in maintenance,services and plant operations, save and except supervisors, persons above the rank of supervisor, office staff and persons regularly employed for not more than 24 hours per week."

Number of names of persons on revised voters' list		46
Number of persons who cast ballots	44	
Number of ballots marked in favour of respondent, Canadian Union of Public Employees	37	
Number of ballots marked against respondent, Canadian Union of Public Employees	7	

JURISDICTIONAL DISPUTES

17161(B)-69-JD: Abe Dick Masonry Limited (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Local 18, and International Hod Carriers' Building and Common Labourers Union of America, Local 837 (Respondents). (WITHDRAWN).

17746(A)-70-JD: CresTile Limited (Complainant) v. The Operative Plasterers' and Cement Masons' International Association, Local 48, and E. Russell, and International Brotherhood of Painters and Allied Trades, Local 1891 (Respondents). (WITHDRAWN).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING JUNE

11816-66-M: Local 4509, United Steelworkers of America (Applicant) v. Algoma Steel Corporation Limited (Respondent).

(SEE INDEXED ENDORSEMENT PAGE 365).

17385-69-M: International Union, United Automobile, Aerospace & Agricultural Implement Workers of America and its Local 673 (Applicant) v. Douglas Aircraft Company of Canada Ltd. (Respondent).

17670-70-M: Canadian Union of Public Employees, Local #216 (clerical) (Applicant) v. The Sault Ste. Marie Board of Education (Respondent).

REFERENCE TO BOARD PURSUANT TO SECTION 79A

17604-70-M: Ottawa River Veneer Company Limited (Formerly Cut-to-Size Plywood) (Employer) v. International Woodworkers of America (Trade Union). (WITHDRAWN).

17839-70-M: Bramar Construction (Employer) v. International Union of Operating Engineers, Local 793 (Trade Union). (WITHDRAWN).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

14709-68-R: Labourers' International Union of North America, Local 183 (Applicant) v. Knight Security Guards Limited (Respondent).

(SEE INDEXED ENDORSEMENT PAGE 377).

17193-69-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local Union 91, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Don Jones Limited (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 382).

17692-70-R: United Brotherhood of Carpenters and Joiners of America Local #1988 (Applicant) v. CNIC Construction Ltd. (Respondent). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 386).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 65

17685-70-U: International Woodworkers of America (Complainant) v. Pyramid Homes (Eastern) Limited (Respondent). (REQUEST DENIED).

INDEXED ENDORSEMENTS - CERTIFICATION

16048-69-R: United Steelworkers of America (Applicant) v. BRAYSHAWS STEEL LIMITED (Respondent) v. Shopmen's Local Union No. 743 of the International Association of Bridge, Structural and Ornamental Iron Workers (AFL, CIO, CLC) (Intervener).

BEFORE: H. D. Brown, Vice-Chairman and Board Members P. J. O'Keeffe and J. E. C. Robinson, Q.C.

DECISION OF VICE-CHAIRMAN H. D. BROWN AND BOARD MEMBER P. J. O'KEEFFE: June 4, 1970.

1. By its decision dated 26th February, 1970, the Board directed that a representation vote be taken of all employees of the respondent in the bargaining unit, as of the date of that endorsement.

A VOTE WAS SUBSEQUENTLY TAKEN BUT THE BALLOTS OF CERTAIN PERSONS WHO HAD PREVIOUSLY BEEN DISCHARGED BY THE RESPONDENT, AND HAD FILED COMPLAINTS UNDER SECTION 65 OF THE LABOUR RELATIONS ACT WERE SEGREGATED, AND THE COUNT WAS NOT MADE. THE APPLICANT SUBMITS THAT SUCH PERSONS SHOULD BE ENTITLED TO VOTE, AND THAT THEIR VOTES BE COUNTED IN THIS MATTER. THE RESPONDENT AND INTERVENER RESIST THIS CONTENTION ON THE BASIS THAT THESE PERSONS WERE, ON THE DATE THE VOTE WAS ORDERED, NOT EMPLOYEES OF THE RESPONDENT, BUT OF GREAT LAKES STEEL PRODUCTS LIMITED (HEREINAFTER REFERRED TO AS GREAT LAKES).

2. AT THE HEARING THE PARTIES AGREED THAT THE FOLLOWING PERSONS WHOSE NAMES APPEAR ON APPENDIX B, PAGE 2, OF THE RETURNING OFFICER'S REPORT, AND WHO WERE NOT THE SUBJECT OF PROCEEDINGS UNDER SECTION 65 OF THE ACT, ARE ENTITLED TO VOTE, NAMELY: MOLLICOLA, ARVELIN, MATSON, SDLOWSKI, NEW, KOTANEN, PUBLIESE, MULIA, AND CONNOLLY. THEY FURTHER AGREED THAT THE REMAINDER OF THE NAMED PERSONS, INCLUDING STRANSKI, SHOULD BE TRANSFERRED TO PAGE 1 OF THAT REPORT, AND BE DEALT WITH ACCORDING TO THIS DECISION.

3. HAVING REGARD TO THE FACTS SET OUT IN THE BOARD'S DECISION DATED 26TH FEBRUARY, DEALING WITH THE APPLICATION FOR CERTIFICATION, AND ALSO IN THE BOARD'S DECISION DATED 23RD APRIL, 1970, DEALING WITH THE PROCEEDINGS UNDER SECTION 65 OF THE ACT, IT IS NOT NECESSARY TO RECITE IN DETAIL ALL OF THE HISTORY OF THIS MATTER. CERTAIN EMPLOYEES OF THE RESPONDENT WERE DISCHARGED BY THE RESPONDENT IN MAY, 1969, AND THESE EMPLOYEES WERE REINSTATED IN THEIR EMPLOYMENT WITH THE RESPONDENT BY THE BOARD'S DECISION DATED 23RD APRIL, 1970. ON OR ABOUT 4TH JUNE, 1969, THE EMPLOYEES SO AFFECTED WERE OFFERED EMPLOYMENT WITH GREAT LAKES, WHICH EACH OF THEM ACCEPTED. IN THIS REGARD, WE REFER TO PARAGRAPH 10 OF THE BOARD'S DECISION DATED 23RD APRIL, 1970 - (BOARD FILE NO. 16200-69-U), WHICH IS AS FOLLOWS:-

10. "IN ORDER TO LIMIT THE LOSS SUFFERED BY THE RESPONDENT AND THE AGGRIEVED PERSONS, A COMPROMISE ARRANGEMENT WAS ENTERED INTO DURING THE SECOND WEEK OF JUNE, 1969. UNDER THIS ARRANGEMENT EACH OF THE AGGRIEVED PERSONS WAS OFFERED A JOB WITH GREAT LAKES STEEL PRODUCTS LIMITED (THE RESPONDENT'S PARENT COMPANY). THE WORK FOR GREAT LAKES WAS TO BE PERFORMED IN THE SAME JOB CLASSIFICATIONS AS THEY PREVIOUSLY HELD WITH THE RESPONDENT, AND THEY WERE TO PERFORM THEIR WORK ON THE RESPONDENT'S PREMISES. APPARENTLY, THE RESPONDENT AND GREAT LAKES HAD ENTERED INTO AN AGREEMENT WHEREBY GREAT LAKES WOULD PROVIDE LABOUR FOR THE RESPONDENT. IN ACCORDANCE WITH THIS ARRANGEMENT, GREAT LAKES WROTE THE FOLLOWING LETTER TO EACH OF THE AGGRIEVED PERSONS:-

> THIS WILL CONFIRM YOU ARE BEING HIRED BY GREAT LAKES STEEL PRODUCTS LIMITED IN THE SAME TRADE CLASSIFICATION IN WHICH YOU WERE EMPLOYED BY BRAYSHAWS STEEL LIMITED ON 15TH MAY, 1969.
>
> YOUR CONDITIONS OF EMPLOYMENT ARE AS COVERED BY THE COLLECTIVE AGREEMENT IN FORCE BETWEEN OUR COMPANY AND LOCAL 743 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON-WORKERS.
>
> ACCEPTANCE OF EMPLOYMENT WITH GREAT LAKES STEEL PRODUCTS LIMITED SHOULD IN NO WAY PREJUDICE YOU IN ANY MATTER INVOLVING BRAYSHAWS STEEL LIMITED.
>
> THERE IS SUFFICIENT BACKLOG OF WORK TO ASSURE YOU OF STEADY EMPLOYMENT OF AT LEAST SIX WEEKS' DURATION."

THE EMPLOYEES CONCERNED ACCEPTED THIS EMPLOYMENT BY LETTERS DATED 10TH JUNE, 1969, ALL OF WHICH WERE IN THE FOLLOWING FORM:-

> "I HEREBY ACCEPT EMPLOYMENT WITH GREAT LAKES STEEL PRODUCTS LIMITED AS OFFERED IN YOUR LETTER OF 9TH JUNE, 1969.
>
> I DO SO WITHOUT PREJUDICE TO MY RIGHT OR RIGHTS FOR EMPLOYMENT WITH BRAYSHAWS STEEL LIMITED.
>
> IT IS UNDERSTOOD THAT THIS ACCEPTANCE OF EMPLOYMENT WILL NOT IN ANY WAY HAMPER ANY ACTIONS BEFORE THE ONTARIO LABOUR RELATIONS BOARD BY MYSELF OR THE UNITED STEELWORKERS OF AMERICA."

4. THE EVIDENCE BEFORE US IS THAT THESE PERSONS WORKED IN THE RESPONDENT'S PLANT, IN THE SAME CLASSIFICATIONS AND GENERALLY IN THE SAME JOBS AS THEY HAD BEFORE THEIR DISCHARGE, BUT AS EMPLOYEES OF GREAT LAKES. MANAGEMENT OF THE RESPONDENT AND GREAT LAKES IS INTERLOCKING, AND THE ACCOUNTING PROCEDURES WERE CARRIED ON FROM THE SAME PLACE FOR BOTH. SOME OF THE EMPLOYEE'S WAGE CHEQUES WERE FROM THE RESPONDENT, OTHERS FROM GREAT LAKES; SOME OF THE INSURANCE CARDS ISSUED TO THESE PERSONS SHOWED AS EMPLOYER,

THE RESPONDENT, AND THE T-4 INCOME TAX FORMS INDICATED THAT THE RESPONDENT WAS THE EMPLOYER. IN SPITE OF THOSE MATTERS THE TWO COMPANIES ARE SEPARATE ENTITIES, AND MUST BE TREATED AS SUCH, SO THAT HAVING REGARD TO THE OFFER AND ACCEPTANCE OF EMPLOYMENT ABOVE REFERRED TO, THESE PERSONS BECAME EMPLOYED BY GREAT LAKES. HOWEVER, THE QUESTION REMAINS WHETHER THEY BECAME EMPLOYEES OF THAT COMPANY TO THE EXCLUSION OF THEIR EMPLOYMENT WITH THE RESPONDENT. UNDER SECTION 1(2) OF THE ACT, A PERSON SHALL NOT BE DEEMED TO HAVE CEASED TO BE AN EMPLOYEE BECAUSE OF HIS CEASING TO WORK FOR THAT EMPLOYER AS A RESULT OF A DISMISSAL CONTRARY TO THE ACT. THIS PROTECTS THE UNLAWFULLY DISCHARGED EMPLOYEE WHO MAY BE RETURNED TO HIS EMPLOYMENT SHOULD THAT FLOW FROM A DECISION OF THE BOARD OR OTHERWISE, AND HE RETAINS THAT INTEREST WITH HIS EMPLOYER. SHOULD HE, AFTER HIS DISCHARGE, IN FACT TAKE EMPLOYMENT ELSEWHERE WITH NO INTENTION OF RETURNING TO HIS EMPLOYER, THEN THAT MIGHT BE TAKEN INTO CONSIDERATION BY THE BOARD IN DETERMINING HIS REMEDY UNDER A SUCCESSFUL APPLICATION UNDER SECTION 65. THE PURPOSE OF SECTION 65 IS TO MAKE WHOLE A PERSON WHO HAS BEEN DISCHARGED CONTRARY TO THE ACT, AND IN FINDING FOR REINSTATEMENT, THE BOARD PUTS THE EMPLOYEE IN THE SAME POSITION AS IF HE WAS NOT DISCHARGED. HE WOULD BE ENTITLED TO ALL THE BENEFITS OF AN EMPLOYEE DURING THE TIME HE WAS OFF, INCLUDING THE RIGHT TO VOTE. IN OUR OPINION, THE ONLY WAY THAT COULD BE TAKEN FROM HIM WOULD BE A DEFINITE ACT WITH CLEAR INTENTION TO SEVER THAT RELATIONSHIP AFTER HIS DISCHARGE IN TAKING OTHER EMPLOYMENT. THEN, ALTHOUGH THERE MIGHT STILL REMAIN A CLAIM FOR COMPENSATION, THE PERSON MAY WELL HAVE FORFEITED HIS RIGHT TO REINSTATEMENT TO THE EMPLOY OF THAT EMPLOYER.

5. HERE, THIS IS NOT THE CASE. THE BOARD HAS FOUND IN ITS DECISION OF 23RD APRIL, 1970, REFERRED TO ABOVE, THAT THE EMPLOYMENT OF THOSE PERSONS RESULTED FROM A COMPROMISE ARRANGEMENT IN ORDER TO MITIGATE DAMAGES. BOTH THE RESPONDENT AND THE EMPLOYEES RECOGNIZED THAT THIS WAS NECESSARY, AND IN THE INTERESTS OF BOTH, BUT IT IS REFLECTED IN THE LETTERS BETWEEN THEM THAT BOTH GREAT LAKES AND THE EMPLOYEE REALIZED THAT THERE WERE CLAIMS ON EMPLOYMENT WITH THE RESPONDENT, WHICH THE EMPLOYEES CLEARLY RESERVED IN MAKING THEIR ACCEPTANCE OF EMPLOYMENT "WITHOUT PREJUDICE". THAT, IN OUR OPINION, NEGATES THE INTENTION OF BECOMING EMPLOYEES OF GREAT LAKES EXCLUSIVELY. PERSONS AFFECTED BY DISCHARGE ARE UNDER A DUTY TO MITIGATE THEIR LOSSES IF THEY CLAIM COMPENSATION, AND OBVIOUSLY TO DO THAT EFFECTIVELY, THEY MAY BECOME EMPLOYEES OF SOME OTHER EMPLOYER. AT THAT POINT THEY ARE EMPLOYED BY ONE, AND RETAIN THE RIGHT TO RE-EMPLOYMENT WITH THE OTHER SUBJECT TO A TRIBUNAL'S DETERMINATION, AND IN THAT RESPECT, HAVE TWO DISTINCT AND MUTUALLY EXCLUSIVE INTERESTS. THAT IS THE SITUATION IN THIS CASE - THAT THE PERSONS IN QUESTION RETAINED THEIR RIGHTS TO EMPLOYMENT WITH THE RESPONDENT, AND ON

REINSTATEMENT TO THAT EMPLOYMENT, ARE ENTITLED TO THE ACCRUED BENEFITS, INCLUDING THE RIGHT TO VOTE ON AN ISSUE OF REPRESENTATION OF THE BARGAINING UNIT OF WHICH THEY ARE A PART. THEIR RELATIONSHIP WITH GREAT LAKES, WE FIND, TO BE ONE OF CONVENIENCE IN RELATION TO THE COMPENSATION ISSUE, WHICH THE PARTIES WITH GOOD CAUSE ENTERED INTO, BUT IN THE CIRCUMSTANCES OF THIS PARTICULAR CASE, THIS ACT OF EMPLOYMENT CANNOT BAR THE EMPLOYEES' RIGHTS TO EMPLOYMENT WITH THE RESPONDENT AND THE RESULTS FLOWING THEREFROM.

6. ACCORDINGLY, WE FIND THAT THOSE PERSONS WHO WERE THE SUBJECT OF THE PROCEEDINGS UNDER SECTION 65, AND WHO WERE REINSTATED, WERE IN FACT EMPLOYEES OF THE RESPONDENT ON THE DATE THE VOTE WAS ORDERED, AND ARE, THEREFORE, ENTITLED TO VOTE IN THIS MATTER. THE REGISTRAR IS DIRECTED TO COUNT THE VOTES OF ALL THOSE WHO CAST A BALLOT, INCLUDING THE BALLOTS OF THOSE PERSONS NAMED ON PAGE 1 OF SCHEDULE B OF THE RETURNING OFFICER'S REPORT, AND TO REPORT TO THE BOARD.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C. JUNE 4, 1970.

1. IN VIEW OF MY DISSENT OF FEBRUARY 26TH, 1970, WHEREIN I DECLINED TO ORDER A REPRESENTATION VOTE IN THIS APPLICATION, IT IS NOT MY INTENTION TO ENUNCIATE IN ANY DETAIL MY FINDINGS ON THE ISSUE OF WHICH VOTES SHOULD BE COUNTED IN SUCH REPRESENTATION VOTE.

2. IT WILL SUFFICE FOR ME TO SAY THAT IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, I AM IN AGREEMENT WITH THE ULTIMATE CONCLUSION REACHED BY MY COLLEAGUES IN THEIR DECISION OF JUNE 4TH, 1970, AND ACCORDINGLY WOULD COUNT THE BALLOTS OF THOSE PERSONS WHO WERE THE SUBJECT OF THE PROCEEDINGS UNDER SECTION 65.

3. I DO SO WITHOUT DEROGATING FROM MY DISSENT OF FEBRUARY 26TH, 1970.

16628-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. CANADA SAFEWAY LIMITED (RESPONDENT) v. LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (INTERVENER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: R.P. ARMSTRONG AND CLIFFORD EVANS FOR THE APPLICANT; E. HOREMBALA, V. PINCHIN AND B. SAVAGE FOR THE RESPONDENT; T.E. ARMSTRONG, MICHAEL GRANTHAM AND VIC PATHE FOR THE

INTERVENER.

DECISION OF O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER P.J. O'KEEFFE : JUNE 30, 1970.

1. IN THIS CASE THE INTERVENER MADE REPRESENTATIONS AS TO THE CONDUCT OF THE REPRESENTATION VOTE. ALTHOUGH THE INTERVENER DID NOT APPEAR ON THE BALLOT IT APPEARS THAT THERE IS A RIVALRY BETWEEN THE APPLICANT AND THE INTERVENER FOR THE PURPOSE OF REPRESENTING THE EMPLOYEES WITH WHOM WE ARE CONCERNED.

2. THE FIRST MATTER TO BE DEALT WITH IS THE OBJECTION BY THE INTERVENER AS TO THE APPLICANT'S CAMPAIGN PROPAGANDA. THE INTERVENER RELIES ON DAL-TEX OPTICAL CO. 137 N.L.R.B. 1782. WE FIND THAT THE FACTS IN DAL-TEX OPTICAL CO. CASE ARE SUFFICIENTLY DIFFERENT FROM THE FACTS IN THIS TO MAKE IT INAPPLICABLE TO THE PRESENT SITUATION. EVEN IF WE ARE TO ASSUME THAT THE CASE IS APPLICABLE IN THIS JURISDICTION WE ARE OF THE OPINION THAT THE FORCE OF ITS AUTHORITY HAS BEEN SOMEWHAT DIMINISHED AS A RESULT OF DEAN BOK'S EXTENSIVE REVIEW OF ELECTIONS UNDER THE NATIONAL LABOR RELATIONS ACT. BOK; THE REGULATION OF CAMPAIGN TACTICS IN REPRESENTATION ELECTIONS UNDER THE NATIONAL LABOUR RELATIONS ACT 78 HARV. L. REV. 38 AT P. 76-77 (1964).

3. THE SECOND GROUND RAISED BY THE INTERVENER FOR SETTING ASIDE THE ELECTION WAS IN CONNECTION WITH CERTAIN EMPLOYEES WHO PARTICIPATED IN THE ELECTION ON BEHALF OF THE APPLICANT UNION. HAVING REGARD TO THE PARTICULAR STATUS OF THOSE EMPLOYEES INCLUDING THEIR ELIGIBILITY TO VOTE, AND THEIR INCLUSION IN THE BARGAINING UNIT, WE ARE OF THE OPINION THAT THEIR ACTIVITIES ON BEHALF OF THE APPLICANT IS NOT A PROPER GROUND FOR SETTING ASIDE THE ELECTION.

4. FINALLY, WE ARE OF THE OPINION THAT THE CASUAL CONVERSATION BY MR. PEACH WITH ONE OF THE EMPLOYEES, WHICH WAS RAISED AS AN OBJECTION TO THE VOTE, IS NOT A FACTOR OF SUFFICIENT WEIGHT TO CAUSE US TO SET ASIDE THE VOTE. IN ARRIVING AT OUR CONCLUSION WE HAVE CONSIDERED THAT MR. PEACH'S POSITION EITHER AS A MEMBER OF MANAGEMENT OR AS AN EMPLOYEE IN THE BARGAINING UNIT HAD NOT BEEN DEFINED AT THE TIME OF THE CONVERSATION. THE CONVERSATION TOOK PLACE WITH ONE EMPLOYEE ONLY, IT WAS NOT REPORTED TO OTHER EMPLOYEES AND ACCORDINGLY WOULD NOT HAVE INFLUENCED THE RESULT OF THE VOTE. IN THE RESULT ALL THE OBJECTIONS BY THE INTERVENER CANNOT BE SUSTAINED.

5. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT ASSISTANT STORE MANAGER, BAKERY MANAGER, MEAT MANAGER AND PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, BAKERY MANAGER AND MEAT MANAGER, CONSTITUE A

UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE APPLICANT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

8. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C. JUNE 30, 1970.

I AM IN AGREEMENT WITH THE FINDING OF MY COLLEAGUES THAT THE OBJECTIONS RAISED BY THE INTERVENER WERE NOT SUFFICIENT TO FORM A BASIS FOR SETTING ASIDE THE REPRESENTATION VOTE WHICH HAS BEEN CONDUCTED IN THIS APPLICATION.

I ARRIVE AT MY CONCLUSION BASED UPON THE PROVISIONS OF THE LABOUR RELATIONS ACT, R.S.O. 1960 AND AMENDMENTS THERETO, AND THE PRACTICE AND JURISPRUDENCE WHICH HAS DEVELOPED BY THE ONTARIO LABOUR RELATIONS BOARD IN MAKING ADJUDICATIONS UNDER SUCH ACT.

17246-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 2654 (APPLICANT) v. K-D MANUFACTURING COMPANY LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: FRANK W. REID AND DERRICK MANSON FOR THE APPLICANT; T. R. WILCOX, Q.C., WILLIAM S. COOK AND HOWARD KELLY FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 10, 1970.

. . .

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF

OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. AT THE INITIAL HEARING OF THIS APPLICATION, ON FEBRUARY 11, 1970, FOR CERTIFICATION, COUNSEL FOR THE RESPONDENT ALLEGED THAT THE EVIDENCE OF MEMBERSHIP ADDUCED BY THE APPLICANT BEFORE THE BOARD DID NOT CONSTITUTE MEMBERSHIP IN THE APPLICANT IN ACCORDANCE WITH ITS CONSTITUTION. COUNSEL FOR THE RESPONDENT RELIED ON A DECISION OF THE SUPREME COURT OF CANADA IN METROPOLITAN LIFE INSURANCE CO. V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 ET AL, 70 CLLC ¶ 14,008. THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT CONSISTED OF COMBINATION APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT. IN EACH COMBINATION APPLICATION FOR MEMBERSHIP THE EMPLOYEE HAS APPLIED FOR MEMBERSHIP IN THE APPLICANT AND HAS SIGNED HIS NAME ON THE APPLICATION PORTION OF THE COMBINATION APPLICATION FOR MEMBERSHIP. ON THE RECEIPT PORTION OF THE COMBINATION APPLICATION FOR MEMBERSHIP THE EMPLOYEE HAS COUNTERSIGNED HIS SIGNATURE CERTIFYING THAT HE HAS PAID ONE DOLLAR AS EVIDENCE OF GOOD FAITH IN HIS APPLICATION FOR MEMBERSHIP. THE SIGNATURE OF THE RECIPIENT OF THE DOLLAR HAS ALSO BEEN INSCRIBED ON THE RECEIPT PORTION OF THE COMBINATION APPLICATION FOR MEMBERSHIP. A COPY OF THE CONSTITUTION OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA WAS FILED IN EVIDENCE. THE REPRESENTATIVE OF THE APPLICANT REQUESTED AN ADJOURNMENT SO THAT HE COULD CONSULT WITH THE APPLICANT'S LEGAL STAFF ON THE ALLEGATIONS OF COUNSEL FOR THE RESPONDENT. COUNSEL FOR THE RESPONDENT CONCURRED IN THE REQUEST FOR AN ADJOURNMENT AND GAVE AN UNDERTAKING THAT HE WOULD FILE PARTICULAR OF THE REPRESENTATIONS HE WISHED TO MAKE CONCERNING THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT. IN DUE COURSE THESE PARTICULARS OF REPRESENTATIONS WERE FILED BY COUNSEL FOR THE RESPONDENT.

5. IN ITS PARTICULARS OF REPRESENTATIONS THE RESPONDENT ALLEGED:

> 1. THAT PURSUANT TO THE DECISION OF THE SUPREME COURT OF CANADA IN METROPOLITAN LIFE INSURANCE CO. V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 ET AL IN ITS JUDGMENT PRONOUNCED JANUARY 27TH, 1970 THE EVIDENCE ADDUCED BY THE APPLICANT BEFORE THE BOARD AT THE HEARING HELD ON THE 11TH OF FEBRUARY 1970 WITH RESPECT TO MEMBERSHIP OF THE EMPLOYEES OF THE RESPONDENT IN THE APPLICANT UNION, FAILS TO ESTABLISH MEMBERSHIP IN THAT THE CONSTITUTION OF THE APPLICANT:
>
> (A) BY SECTION 42 PRESCRIBES CERTAIN REQUIREMENTS FOR MEMBERSHIP E.G. A CANDIDIATE MUST BE A

CITIZEN OF THE COUNTRY OF THE LOCAL'S JURISDICTION OR PROOF FURNISHED BY AFFIDAVIT ON A FORM FURNISHED BY THE GENERAL SECRETARY OF THE UNION OF HIS INTENTION TO BECOME A CITIZEN;

(B) BY SECTION 43 A THE CANDIDATE MUST FILL OUT AND SIGN AN APPLICATION CERTIFIED BY TWO MEMBERS OF THE UNION AS VOUCHERS OF THE CANDIDATE'S FITNESS FOR MEMBERSHIP;

(C) BY SECTION 43 B THE APPLICATION MUST BE SUBMITTED TO THE FINANCIAL SECRETARY WITH THE FULL INITIATION FEE WHICH BY REFERENCE TO THIS SECTION AND OTHER SECTIONS OF THE CONSTITUTION SHALL NOT BE LESS THAN FIFTEEN DOLLARS TOGETHER WITH A SUM EQUAL TO THE CURRENT MONTH'S DUES (WHICH BY SECTION 44 A CANNOT BE LESS THAN FOUR DOLLARS PER MONTH);

(D) THE APPLICATION MUST THEN LAY OVER FOR ONE WEEK FOR INVESTIGATION AFTER WHICH THE CANDIDATE MUST BE VOTED ON AND IF ELECTED IS INITIATED;

(E) BY SECTION 43 G A MEMBER IS ENTITLED TO THE RIGHTS AND PRIVILEGES OF THE BROTHERHOOD, BUT OTHERWISE IT IS SUBMITTED HE IS NOT ENTITLED TO THE RIGHTS AND PRIVILEGES OF THE BROTHERHOOD;

(F) BY SECTION 44 B THERE CAN BE NO REMISSION FOR CANCELLATION OF DUES;

(G) BY SECTION 6 C WHILE A LOCAL MAY MAKE BY-LAWS THEY CANNOT MAKE BY-LAWS WHICH CONFLICT WITH THE CONSTITUTUION OF THE INTERNATIONAL BODY;

2. IT IS SUBMITTED THAT WITHOUT ANY FURTHER DETAILED REFERENCE TO THE CONSTITUTION OF THE APPLICANT THIS IS SUFFICIENT TO SHOW THAT THE EVIDENCE BEFORE THE BOARD INDICATES THAT:

(A) THE APPLICATION FOR MEMBERSHIP DOES NOT CONFORM TO THE UNION CONSTITUTION, AND

(B) THE CERTIFICATE AS TO THE FEES PAID DOES NOT COMPLY WITH THE UNION CONSTITUTION, AND

(c) On this evidence the employees of the Respondent claimed to be members of the Applicant would have to be excluded from membership and could not be members.

It is further submitted that having regard to the representations made on behalf of the Respondent at the Hearing on February 11th, the evidence before the Board filed by the Applicant with respect to membership and the Union Constitution filed by the Respondent that the Board must either:

(a) Dismiss the application, or

(b) Make an enquiry of its own in accordance with the provisions of Section 7, Sub-section 1 of The Labour Relations Act, R.S.O. 1960, Chapter 202 as amended to satisfy itself as to whether the persons in the employ of the Respondent alleged to be members of the Applicant are members of the Applicant and that in any such enquiry the Respondent should be permitted to be present and make representations; or

(c) Order a vote.

6. Prior to the continuation of hearing of this application for certification on March 26, 1970, the Legislative Assembly of the Province of Ontario enacted The Labour Relations Amendment Act, 1970. This Act received Royal Assent on March 19, 1970. This application for certification was commenced before The Labour Relations Amendment Act, 1970, came into force, but was not finally disposed of when this Act came into force.

7. The relevant portions of the constitution of the United Brotherhood of Carpenters and Joiners of America referred to by the Respondent are:

Section 6

C To subordinate Local or Auxiliary Unions, District, State and Provincial Councils the right is conceded to make necessary laws for Locals and District, State and Provincial Councils which do not conflict with the laws of the International Body.

Section 42

J Candidates applying for admission in any Local Union under jurisdiction of the United

BROTHERHOOD MUST BE CITIZENS OF ONE OF THE COUNTRIES INCLUDED IN SAID JURISDICTION, OR MUST FURNISH PROOF BY AFFIDAVIT ON FORMS FURNISHED BY THE GENERAL SECRETARY OF THEIR INTENTION TO BECOME CITIZENS OF THE COUNTRY WHERE THEY MAKE APPLICATION FOR MEMBERSHIP.

SECTION 43

A A CANDIDATE QUALIFIED AND WHO DESIRES TO BECOME A MEMBER OF ANY LOCAL UNION OF THE UNITED BROTHERHOOD MUST FILL OUT AND SIGN THE REGULAR APPLICATION BLANK IN DUPLICATE AND HAVE THE SAME CERTIFIED TO BY TWO MEMBERS IN GOOD STANDING, AS VOUCHERS FOR THE APPLICATION'S FITNESS TO BECOME A MEMBER. AFTER THE APPLICANT HAS BEEN INITIATED, THE FINANCIAL SECRETARY SHALL SEND THE ORIGINAL APPLICATION TO THE GENERAL SECRETARY AT THE CLOSE OF THE MEETING. THE DUPLICATE SHALL BE FILED BY THE FINANCIAL SECRETARY FOR FUTURE REFERENCE.

B THE APPLICATION OF THE CANDIDATE MUST BE PRESENTED TO THE FINANCIAL SECRETARY, WITH THE FULL INITIATION FEE, WHICH, EXCEPT FOR APPRENTICES AND APPLICANTS FOR NON-BENEFICIAL MEMBERSHIP IN BENEFICIAL LOCAL UNIONS, SHALL BE NOT LESS THAN FIFTEEN DOLLARS ($15.00) AND A SUM EQUAL TO THE CURRENT MONTH'S DUES, AND BEFORE THE CANDIDATE CAN BE OBLIGATED SHALL LAY OVER ONE WEEK FOR INVESTIGATION AND SHALL BE REFERRED TO A SPECIAL COMMITTEE OF THREE, WHO SHALL IN THE MEANTIME, INQUIRE INTO THE CANDIDATE'S QUALIFICATIONS TO BECOME A MEMBER AND REPORT AT THE NEXT REGULAR MEETING OF THE LOCAL UNION MAKING SUCH RECOMMENDATIONS AS THEY DEEM PROPER, OR THE CANDIDATE MAY BE ELECTED AND INITIATED AT THE SAME MEETING IF THE INVESTIGATING COMMITTEE REPORTS FAVORABLY.

G EACH MEMBER WILL BE ENTITLED TO ALL THE RIGHTS AND PRIVILEGES OF THIS BROTHERHOOD AS PRESCRIBED IN THE CONSTITUTION AND LAWS OF THE UNITED BROTHERHOOD BY STRICTLY ADHERING TO THE OBLIGATION AS PRESCRIBED IN THE RITUAL.

SECTION 44

A MINIMUM DUES IN ALL LOCAL UNIONS SHALL BE ESTABLISHED IN AN AMOUNT OF FOUR DOLLARS ($4.00) PER MONTH TO BE PAID BY ALL MEMBERS. WHENEVER, IN THE JUDGMENT OF THE GENERAL PRESIDENT, THE DUES ESTABLISHED BY ANY LOCAL UNION OR PER CAPITA TAX BY A DISTRICT COUNCIL APPEAR INADEQUATE TO ENABLE THE LOCAL UNION OR DISTRICT COUNCIL TO FUNCTION PROPERLY AND IN ACCORDANCE WITH THE CONSTITUTION AND LAWS OF THE UNITED BROTHERHOOD, HE SHALL HAVE THE AUTHORITY TO MAKE A SURVEY OF THE FINANCES OF SUCH LOCAL UNION OR DISTRICT COUNCIL. UPON COMPLETION OF THE SURVEY HE SHALL SUBMIT A REPORT TO THE GENERAL EXECUTIVE BOARD. THE GENERAL EXECUTIVE BOARD IS AUTHORIZED AND EMPOWERED UPON THE BASIS OF THE SURVEY TO ESTABLISH THE PROPER AMOUNT OF SUCH DUES. THE GENERAL EXECUTIVE BOARD IS ALSO AUTHORIZED AND EMPOWERED TO ESTABLISH A MINUMUM FEE TO BE PAID BY EACH MEMBER FOR A WORKING CARD.

B MONTHLY DUES SHALL BE CHARGED ON THE BOOKS ON THE FIRST OF EACH MONTH, BUT A MEMBER DOES NOT FALL IN ARREARS UNTIL THE END OF THE MONTH IN WHICH THE MEMBER OWES THREE MONTHS' DUES. NO OFFICER OR MEMBER SHALL BE EXEMPT FROM PAYING DUES OR ASSESSMENTS, NOR SHALL THE SAME BE REMITTED OR CANCELLED IN ANY MANNER.

8. AT THE CONTINUATION OF HEARING ON MARCH 26, 1970, COUNSEL FOR THE RESPONDENT STATED THAT HAVING REGARD TO THE PROVISION OF THE LABOUR RELATIONS AMENDMENT ACT, 1970, HE WOULD ONLY OFFER ARGUMENT ON THOSE PORTIONS OF THE CONSTITUTION OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA WHICH DISCRIMINATE AGAINST BOTH APPLICANTS FOR MEMBERSHIP AND MEMBERS ON THE GROUNDS OF NATIONALITY. COUNSEL FOR THE RESPONDENT ADOPTED THE POSITION THAT HAVING REGARD TO THE PROVISIONS OF SECTION 10 OF THE LABOUR RELATIONS ACT, THE BOARD WAS PROHIBITED FROM CERTIFYING THE APPLICANT. THE REPRESENTATIVE OF THE APPLICANT FILED IN EVIDENCE WITH THE BOARD A NOTICE OF DISPENSATION DATED JUNE 6, 1967, UNDER THE SIGNATURE OF THE GENERAL PRESIDENT WHICH READS:

NOTICE OF DISPENSATION

PURSUANT TO POWERS VESTED IN ME BY SECTION 10 OF THE CONSTITUTION AND LAWS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF

AMERICA, IT IS HEREBY DECLARED THAT:

> THE CITIZENSHIP REQUIREMENTS OR QUALIFICATIONS RELATING TO ELIGIBILITY FOR MEMBERSHIP OR FOR APPOINTED OR ELECTED OFFICE FOUND IN SECTION 9F, 31A, 31E AND 42J OF THE CONSTITUTION AND LAWS, ARE HEREBY DISPENSED WITH IN THE PROVINCE OF ONTARIO, SO THAT NO PERSON TO WHOM THESE SECTIONS APPLY IN ONTARIO SHALL BE INELIGIBLE BY REASON OF THE FACT THAT HE IS NOT OR DOES NOT INTEND TO BECOME A CITIZEN.

DATED AT WASHINGTON THIS 6 OF JUNE, A. D. 1967.

"M. A. HUTCHESON"

M. A. HUTCHESON
GENERAL PRESIDENT

9. THE BOARD FINDS THAT THE NOTICE OF DISPENSATION FILED BY THE REPRESENTATIVE OF THE APPLICANT DISPENSES WITH THE CITIZENSHIP REQUIREMENTS ON QUALIFICATIONS RELATING TO ELIGIBILITY FOR MEMBERSHIP OR FOR APPOINTED OR ELECTED OFFICE FOUND IN THE PROVISIONS OF THE CONSTITUTION AND LAWS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA IN THE PROVINCE OF ONTARIO. THERE IS NO EVIDENCE BEFORE THE BOARD, THEREFORE, THAT THE APPLICANT DOES, IN FACT, DISCRIMINATE AGAINST ANY PERSON IN ONTARIO ON ANY OF THE GROUNDS MENTIONED IN SECTION 10 OF THE LABOUR RELATIONS ACT. COUNSEL FOR THE RESPONDENT ALSO QUESTIONED THE POWER OF THE GENERAL PRESIDENT TO GRANT DISPENSATIONS AND TOOK THE POSITION THAT IT WAS NECESSARY TO ESTABLISH THAT THIS WAS AN EXTRAORDINARY CASE. THE GENERAL PRESIDENT IN GRANTING THE DISPENSATION REFERRED TO IN PARAGRAPH 8, SPECIFICALLY MADE HIS DECLARATION PURSUANT TO SECTION 10 OF THE CONSTITUTION OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA. SECTION 10A, N READ:

SECTION 10

A THE GENERAL PRESIDENT SHALL ISSUE AND SIGN ALL CHARTERS, MAY GRANT DISPENSATIONS IN EXTRAORDINARY CASES AND SHALL FILL ANY VACANCIES AMONG THE GENERAL OFFICERS BY CONSENT OF A MAJORITY OF THE GENERAL EXECUTIVE BOARD. THE GENERAL PRESIDENT SHALL HAVE THE AUTHORITY TO

APPOINT ANY MEMBER AS A REPRESENTATIVE TO ASSIST IN CARRYING ON THE AFFAIRS OF THE UNITED BROTHERHOOD. SUCH REPRESENTATIVE SHALL HAVE THE SAME QUALIFICATIONS AS THOSE REQUIRED BY GENERAL OFFICERS. WHEN DIRECTED BY THE GENERAL PRESIDENT, THE REPRESENTATIVE SHALL ASSIST AND ADVISE THE OFFICERS AND BUSINESS REPRESENTATIVES OF LOCAL UNIONS AND DISTRICT COUNCILS. THEY SHALL ALSO PERFORM SUCH OTHER DUTIES AS DIRECTED BY THE GENERAL PRESIDENT. THE COMPENSATION FOR REPRESENTATIVES SHALL BE FIXED BY THE GENERAL PRESIDENT.

N THE GENERAL PRESIDENT SHALL HAVE THE POWER TO GRANT DISPENSATION ON ALL MATTERS WHICH WILL BE BENEFICIAL TO THE UNITED BROTHERHOOD.

IN OUR OPINION, THE GENERAL PRESIDENT HAS THE POWER TO DETERMINE WHAT IS AN "EXTRAORDINARY CASE", TO DETERMINE WHAT ARE "MATTERS WHICH WILL BE BENEFICIAL TO THE UNITED BROTHERHOOD" AND TO GRANT THE DISPENSATION REFERRED TO IN PARAGRAPH 8.

10. HAVING REGARD TO ALL OF THE EVIDENCE BEFORE THE BOARD AND TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD IS SATISFIED THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 2, 1970, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2))J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

17296-69-R: CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) v. MERCURY TERRAZZO LIMITED (RESPONDENT) v. LOCAL NO. 31 MARBLE MASONS, TILE SETTERS AND TERRAZZO MECHANICS AFFILIATED WITH THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. J. BLAIS AND J. MEIORIN FOR THE APPLICANT, R. D. PERKINS FOR THE RESPONDENT, R. KOSKIE AND D. DEMONTE FOR THE INTERVENERAND OBJECTORS.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER E. BOYER: JUNE 2, 1970.

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2. THE INSTANT APPLICATION IS MADE UNDER THE CONSTRUCTION INDUSTRY SECTIONS OF THE ACT. COUNSEL FOR THE APPLICANT ADVISED THE BOARD THAT THE APPLICANT HAS NOT ENTERED INTO ANY COLLECTIVE AGREEMENTS PERTAINING TO THE CONSTRUCTION INDUSTRY. FOR THE REASONS GIVEN IN THE SPEEDY TILE & CARPET CONTRACTORS CASE, (BOARD FILE No. 17307-69-R) THE BOARD FINDS THAT THE APPLICANT IS NOT A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO THE CONSTRUCTION INDUSTRY WITHIN THE MEANING OF SECTION 90(B) OF THE LABOUR RELATIONS ACT.

3. THE RESPONDENT IS ENGAGED IN THE BUSINESS OF LAYING BOTH TILE AND TERRAZZO. HAVING REGARD TO THE NATURE OF THE RESPONDENT'S OPERATIONS AND THE WORK PERFORMED BY THE PERSONS IN ITS EMPLOY, THE BOARD FINDS THAT ALL TILE SETTER AND TERRAZZO MECHANICS AND LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING. (SEE WINTER & SON CASE, OLRB M.R. FEBRUARY 1967, P. 889.)

4. FOR PURPOSES OF CLARITY, THE BOARD DECLARES THAT ALL HELPERS AND GRINDERS FALL WITHIN THE CLASSIFICATION OF LABOURER.

5. THE INTERVENER ALLEGED THAT THERE WAS A COLLECTIVE AGREEMENT IN EFFECT BETWEEN ITSELF AND THE METRO MARBLE, TILE & TERRAZZO ASSOCIATION DATED FEBRUARY 7, 1969 WHICH IS BINDING UPON THE RESPONDENT. THE INSTANT APPLICATION WAS MADE ON JANUARY 29, 1970 WHICH IS WITHIN A PERIOD OF A YEAR OF THE ABOVE PURPORTED AGREEMENT COMING INTO EFFECT. THE APPLICANT, PURSUANT TO SECTION 45A OF THE ACT, SUBMITS THAT AT THE TIME THE PURPORTED COLLECTIVE AGREEMENT WAS ENTERED INTO THE INTERVENER WAS NOT ENTITLED TO REPRESENT THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. THE RESPONDENT AND THE INTERVENER ADVISED THE BOARD AT THE HEARING IN THIS MATTER THAT THEY WERE NOT IN A POSITION TO DISCHARGE THE ONUS PLACED UPON THEM BY SUBSECTION (2) OF SECTION 45A OF THE ACT. THE BOARD ACCORDINGLY FINDS THAT THE PURPORTED COLLECTIVE AGREEMENT IS NOT A BAR TO THE INSTANT APPLICATION.

6. THERE WERE ALSO FILED WITH THE BOARD TWO STATEMENTS OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION OF THE APPLICANT SIGNED BY THIRTEEN PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT, EIGHT OF WHOM ARE CLAIMED IN MEMBERSHIP BY THE APPLICANT. IF THE BOARD WERE

TO GIVE WEIGHT TO THE STATEMENTS, THE APPLICANT WOULD HAVE UNQUALIFIED EVIDENCE OF MEMBERSHIP FOR LESS THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT REQUIRED FOR OUTRIGHT CERTIFICATION. COUNSEL FOR THE OBJECTORS, HOWEVER, ADVISED THE BOARD THAT HE HAD NO EVIDENCE TO CALL AS TO THE ORIGINATION, PREPARATION OR CIRCULATION OF THE STATEMENTS OF DESIRE. IN THESE CIRCUMSTANCES, THE BOARD FINDS THAT THE DOCUMENT IN NO WAY WEAKENS THE EVIDENCE OF MEMBERSBIP SUBMITTED BY THE APPLICANT.

7. FOR THE REASONS GIVEN IN THE POLMAR TILE COMPANY CASE, BOARD FILE No. 17304-69-R, THE ONLY RELEVANT DATE FOR PURPOSES OF DETERMINING THE MEMBERSHIP POSITION OF THE APPLICANT WITH REGARD TO THE COUNT IS THE DATE OF THE MAKING OF THE APPLICATION.

8. THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN SUPPORT OF ITS APPLICATION TAKES THE FORM OF COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPT CARDS. THE APPLICATION PORTION OF THE CARDS BEARS THE SIGNATURES OF THE PERSONS APPLYING FOR MEMBERSHIP. THE RECEIPT PORTION OF THE CARDS, WHICH IS ON THE REVERSE SIDE OF THE APPLICATION, INDICATES THE PAYMENT OF ONE DOLLAR IN EACH CASE AND BEARS THE SIGNATURE OF THE COLLECTOR. THE RECEIPTS ARE NOT COUNTERSIGNED BY THE PERSONS APPLYING FOR MEMBERSHIP. RATHER, THEY BEAR THE PRINTED NAMES OF THE PERSONS APPLYING FOR MEMBERSHIP. IN ADDITION TO THE COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPT CARDS, THE APPLICANT ALSO SUBMITTED MEMBERSHIP CARDS FOR ALL OF THE PERSONS CONCERNED SIGNED BY THE GENERAL PRESIDENT OF THE APPLICANT CERTIFYING THAT EACH PERSON IS A MEMBER OF THE APPLICANT IN GOOD STANDING.

9. THE BOARD, OF NECESSITY, HAS TO RELY HEAVILY ON THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED IN SUPPORT OF AN APPLICATION FOR CERTIFICATION. FOR THAT REASON, ALTHOUGH THE BOARD HAS NOT MADE IT ABSOLUTELY MANDATORY, IT IS HIGHTLY DESIRABLE, AND THE BOARD REQUESTS, THAT RECEIPTS SUBMITTED INDICATING THE PAYMENT OF INITIATION FEES BE SIGNED NOT ONLY BY THE COLLECTORS BUT ALSO COUNTERSIGNED BY THE APPLICANTS FOR MEMBERSHIP. THIS PRECAUTION PROVIDES MORE ADEQUATE PROTECTION FOR BOTH THE BOARD AND THE APPLICANT TRADE UNION WHICH IS RELYING ON THE DOCUMENTARY EVIDENCE. WHERE THERE IS ANY DOUBT ON THE PART OF THE BOARD AS TO THE PROPRIETY OF THE PROCEDURES FOLLOWED BY AN APPLICANT TRADE UNION IN THE SECURING OF THE EVIDENCE OF MEMBERSHIP UPON WHICH IT RELIES, THE ABSENCE OF COUNTERSIGNATURES ON THE RECEIPTS FOR INITIATION FEES MUST WEIGH HEAVILY AGAINST THE APPLICANT.

10. FOR INSTANCE, IN THE KENNAMETAL TOOLS & MANUFACTURING CO. LIMITED CASE, OLRB M.R. NOVEMBER 1963, P. 422, THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT UNION CONSISTED OF APPLICATIONS AND SEPARATE CORRESPONDING RECEIPTS. THE MEMBERSHIP APPLICATIONS BORE THE SIGNATURES

OF THE PERSONS APPLYING FOR MEMBERSHIP. THE RECEIPTS WHICH INDICATED THE PAYMENT OF ONE DOLLAR IN EACH CASE BORE THE SIGNATURES OF THE COLLECTORS AND OSTENSIBLY WERE COUNTERSIGNED BY THE APPLICANTS FOR MEMBERSHIP. THE COUNTERSIGNATURES DID NOT CORRESPOND WITH THE SPECIMEN SIGNATURES FILED BY THE RESPONDENT. THE BOARD AT THE HEARING OF THE APPLICATION INQUIRED INTO THE DISCREPANCY. THE BOARD WAS INFORMED BY THE REPRESENTATIVE OF THE APPLICANT THAT THE NAMES APPEARING ABOVE THE WORDS "NEW MEMBER'S SIGNATURE" ON THE RECEIPTS, IN FACT, WERE SIGNED BY THE COLLECTORS. BECAUSE OF THE FACT THAT NONE OF THE RECEIPTS SUBMITTED BY THE APPLICANT INDICATING THE PAYMENT OF ONE DOLLAR WERE COUNTERSIGNED AND BECAUSE OF THE NON-DISCLOSURE BY THE APPLICANT WITH RESPECT TO THE COUNTERSIGNATURES, THE BOARD FOUND THAT THE EVIDENCE OF MEMBERSHIP WAS SUFFICIENTLY WEAKENED SO AS TO DISENTITLE THE APPLICANT TO CERTIFICATION WITHOUT THE TAKING OF A REPRESENTATION VOTE.

11. WE WOULD MAKE REFERENCE ALSO TO THE MUNICIPAL CORPORATION OF THE CITY OF WINDSOR CASE, 53 CLLC 1443, WHICH WAS AN APPLICATION FOR CERTIFICATION. AT THE ORIGINAL HEARING, CERTAIN ALLEGATIONS WERE MADE WITH REGARD TO DISCREPANCIES IN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT TRADE UNION. IT WOULD APPEAR FROM THE CONTENT OF THE DECISION THAT THERE WERE NO COUNTERSIGNATURES BY THE APPLICANTS FOR MEMBERSHIP ON THE RECEIPTS SUBMITTED FOR THEM WHICH SHOWED THE PAYMENT OF AN INITIATION FEE. THE BOARD IN THAT CASE APPOINTED AN EXAMINER TO INQUIRE INTO THE ALLEGATIONS AND AS A RESULT OF HIS REPORT, THE BOARD ISSUED SUMMONSES TO SEVERAL WITNESSES. BASED ON THEIR EVIDENCE, THE BOARD DID NOT FIND THAT THE APPLICANT HAD SCHEMED TO DEFRAUD THE BOARD. THE BOARD DID FIND, HOWEVER, THAT THE ORGANIZERS AND OTHER REPRESENTATIVES OF THE APPLICANT EXERCISED EXTREME LAXITY IN OBTAINING THE DOCUMENTARY EVIDENCE OF UNION MEMBERSHIP WHICH IT SUBMITTED WITH ITS APPLICATION. MORE SPECIFICALLY, THE BOARD NOTED IN ITS DECISION THAT FIVE EMPLOYEES HAD TESTIFIED THAT THEY DID NOT PAY UNION INITIATION FEES AS INDICATED ON THE RECEIPTS FILED. THE BOARD ACKNOWLEDGED THAT THIS EVIDENCE WAS DISPUTED BY OTHER WITNESSES. IT CONCLUDED, HOWEVER, FROM THE EVIDENCE TAKEN AS A WHOLE THAT CERTAIN UNION RECEIPTS WERE COMPLETED AND DISTRIBUTED TO EMPLOYEES ON THE STRENGTH OF UNFULFILLED PROMISES FOR FUTURE PAYMENT. MOREOVER, THE BOARD FOUND THAT SOME RECEIPTS WERE ALTERED AS TO DATE BEFORE BEING FILED WITH THE BOARD. IN THOSE PARTICULAR CIRCUMSTANCES, THE BOARD DISMISSED THE APPLICATION.

12. IN THE INSTANT APPLICATION, THE EVIDENCE OF MEMBERSHIP TAKES THE FORM OF COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPT CARDS AND THE SIGNATURES OF THE APPLICANTS FOR MEMBERSHIP DO APPEAR ON THE APPLICATION PORTION OF THE CARDS. THIS IS UNLIKE THE KENNAMETAL TOOLS & MANUFACTURING CO. LIMITED CASE (SUPRA) WHERE THE RECEIPTS WERE SEPARATE DOCUMENTS FROM THE APPLICATIONS FOR MEMBERSHIP. MOREOVER, THE RECEIPT

PORTION OF THE COMBINATION CARDS SUBMITTED BY THE APPLICANT IN THE INSTANT CASE BEARS THE WORDS "PAID BY" AND THE NAME OF THE APPLICANT FOR MEMBERSHIP IS PRINTED AFTER THE ABOVE WORDS. AGAIN, THIS IS UNLIKE THE KENNAMENTAL CASE WHERE THE RECEIPTS BORE THE WORDS "NEW MEMBER'S SIGNATURE". IN THAT CASE, MOREOVER, A SIGNATURE APPEARED ON EACH RECEIPT AFTER THOSE WORDS WHICH, ON ITS FACE, OSTENSIBLY WAS THAT OF THE NEW MEMBER. ONLY AT THE HEARING OF THE APPLICATION WAS THE DISCLOSURE MADE THAT THE SIGNATURES ON THE RECEIPTS WERE THE SIGNATURES OF THE COLLECTORS AND NOT OF THE NEW MEMBERS. IN THE INSTANT APPLICATION, BY PRINTING THE NAME OF THE APPLICANTS FOR MEMBERSHIP ON THE RECEIPT PORTION OF THE CARD, THE APPLICANT MADE IT UNEQUIVOCALLY CLEAR THAT THE RECEIPTS WERE NOT COUNTERSIGNED. IN OTHER WORDS, THE BOARD IN NO WAY WAS MISLED AS IN THE KENNAMETAL CASE. MOREOVER, IN THE INSTANT CASE, THE APPLICANT SUBMITTED MEMBERSHIP CARDS FOR ALL OF THE PERSONS CONCERNED SIGNED BY THE GENERAL PRESIDENT OF THE APPLICANT CERTIFYING THAT EACH PERSONS IS A MEMBER OF THE APPLICANT IN GOOD STANDING IN ADDITION TO THE COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS.

13. IN THE MUNICIPAL CORPORATION OF THE CITY OF THE CITY OF WINDSOR CASE (SUPRA) THE BOARD FOUND EXTREME LAXITY ON THE PART OF THE APPLICANT TRADE UNION IN SECURING THE DOCUMENTARY EVIDENCE OF MEMBERSHIP WHICH IT SUBMITTED. THE BOARD, MOREOVER, CONCLUDED THAT THERE WERE IRREGULARITIES IN THE EVIDENCE WITH RESPECT TO THE PAYMENT OF INITIATION FEES. UNLIKE THE CITY OF WINDSOR CASE, THERE IS NO EVIDENCE BEFORE THE BOARD IN THE INSTANT CASE THAT EVEN SUGGESTS IRREGULARITIES IN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT WHICH CREATE ANY MISGIVINGS IN THE MINDS OF THE BOARD AS TO THE PROPRIETY OF THE PROCEDURES FOLLOWED BY THE APPLICANT IN OBTAINING THE EVIDENCE OF MEMBERSHIP WHICH IT HAS SUBMITTED. MORE SPECIFICALLY, NO EVIDENCE WAS PRESENTED OR REPRESENTATIONS MADE WHICH CAUSE THE BOARD TO DOUBT THAT THE PERSONS WHO SIGNED THE APPLICATION PORTION OF THE MEMBERSHIP CARD PAID THE ONE DOLLAR INITIATION FEE SHOWN ON THE RECEIPT PORTION ON THE REVERSE SIDE OF THE CARD

14. WE WOULD MENTION ALSO THAT FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY, WHICH WAS FILED OVER THE SIGNATURE OF JOHN MEIORIN, THE PRESIDENT OF THE APPLICANT, READS, IN PARAGRAPH 3, THAT ON THE BASIS OF MEIORIN'S PERSONAL KNOWLEDGE AND INQUIRIES THAT HE HAD MADE, THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS AS COLLECTORS WERE THE PERSONS WHO ACTUALLY COLLECTED THE INITIATION FEES, AND THAT EACH MEMBER, ON WHOSE BEHALF A RECEIPT WAS SUBMITTED, HAD PERSONALLY PAID IN MONEY THE AMOUNT SHOWN ON HIS OWN BEHALF. WHILE THE FORM 54, BY ITSELF, IS NOT SUFFICIENT EVIDENCE TO SATISFY THE BOARD THAT THE SPECIFIED INITIATION FEES WERE PAID BY APPLICANTS FOR MEMBERSHIP ON THEIR OWN BEHALF, IT IS SUPPORTING EVIDENCE OF THAT FACT.

15. We accordingly find that the absence of countersignatures on the receipt portion of the cards, in the circumstances of the instant case, does not so weaken the evidence of membership submitted by the applicant so as to cause the Board to direct the taking of a representation vote.

16. The Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on February 9, 1970, the terminal date fixed for this application and the date which the Board determines, under section 77(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

17. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER R. W. TEAGLE: June 2, 1970.

On the basis of the Kennametal Tools & Manufacturing Co. Limited Case, OLRB M.R. November 1963, p. 422, referred to in the majority decision, it would appear that if there is some defect in the receipts, that this defect weakens the evidence of membership to a point where a vote should be held to ascertain the true wishes of the employees. As the receipts in this case were not countersigned I would have ordered a vote as was done in the Sterling Tile Company Case (February 6, 1970, Board File No. 17112-69-R).

17301-69-R: Canadian Union of Construction Workers (Applicant) v. Bloor Terrazzo Tile & Mosaic Ltd.(Respondent) v. Local No. 31 Marble Masons, Tile Setters and Terrazzo Mechanics affiliated with the Bricklayers, Masons and Plasterers International Union of America (Intervener) v. Group of Employees (Objectors).

BEFORE: J. H. Brown, Q.C., Alternate Chairman, and Board Members E. Boyer and R. W. Teagle.

APPEARANCES AT THE HEARING: J. J. Blais and J. Meiorin for the applicant, R. D. Perkins and M. Destefano for the respondent, R. Koskie and D. DeMonte for the intervener and objectors.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER E. BOYER: June 2, 1970.

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2. The instant application is made under the Construction Industry sections of the Act. Counsel for the applicant advised the Board that the applicant has not entered into any collective agreements pertaining to the construction industry. For the reasons given in the Speedy Tile & Carpet Contractors Case, (Board File No. 17307-69-R) the Board finds that the applicant is not a trade union that according to established trade union practice pertains to the construction industry within the meaning of section 90(b) of The Labour Relations Act.

3. The respondent is engaged in the business of laying both tile and terrazzo. Having regard to the nature of the respondent's operations and the work performed by the persons in its employ, the Board finds that all tile setter and terrazzo mechanics and labourers in the employ of the respondent in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining. (See Winter & Son Case, OLRB M.R. February 1967, p. 889.)

4. For purposes of clarity, the Board declares that all helpers and improvers fall within the classification of labourer.

5. The intervener alleged that there was a collective agreement in effect between itself and The Metro Marble, Tile & Terrazzo Association dated February 7, 1969 which is binding upon the respondent. The instant application was made on January 29, 1970 which is within a period of a year of the above purported agreement coming into effect. The applicant, pursuant to section 45a of the Act, submits that at the time the purported collective agreement was entered into the intervener was not entitled to represent the employees of the respondent in the bargaining unit. The respondent and the intervener advised the Board at the hearing in this matter that they were not in a position to discharge the onus placed upon them by subsection (2) of section 45a of the Act. The Board accordingly finds that the purported collective agreement is not a bar to the instant application.

6. There was also filed with the Board a statement of desire expressing opposition to the application of the applicant signed by ten persons purporting to be employees of the respondent, all of whom are claimed in membership by the applicant. If the Board were to give weight to the statement, the applicant would have unqualified evidence of membership for less than fifty-five per cent of the employees in the bargaining unit required for outright certification. Counsel for the objectors, however, advised the Board that he had no evidence to call

AS TO THE ORIGINATION, PREPARATION OR CIRCULATION OF THE STATEMENT OF DESIRE. IN THESE CIRCUMSTANCES, THE BOARD FINDS THAT THE DOCUMENT IN NO WAY WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT.

7. FOR THE REASONS GIVEN IN THE POLMAR TILE COMPANY CASE, BOARD FILE NO. 17304-69-R, THE ONLY RELEVANT DATE FOR PURPOSES OF DETERMINING THE MEMBERSHIP POSITION OF THE APPLICANT WITH REGARD TO THE COUNT IS THE DATE OF THE MAKING OF THE APPLICATION.

8. THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN SUPPORT OF ITS APPLICATION TAKES THE FORM OF COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPT CARDS. THE APPLICATION PORTION OF THE CARDS BEARS THE SIGNATURES OF THE PERSONS APPLYING FOR MEMBERSHIP. THE RECEIPT PORTION OF THE CARDS, WHICH IS ON THE REVERSE SIDE OF THE APPLICATION, INDICATES THE PAYMENT OF ONE DOLLAR IN EACH CASE AND BEARS THE SIGNATURE OF THE COLLECTOR. THE RECEIPTS ARE NOT COUNTERSIGNED BY THE PERSONS APPLYING FOR MEMBERSHIP. RATHER, THEY BEAR THE PRINTED NAMES OF THE PERSONS APPLYING FOR MEMBERSHIP. IN ADDITION TO THE COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPT CARDS, THE APPLICANT ALSO SUBMITTED MEMBERSHIP CARDS FOR ALL OF THE PERSONS CONCERNED SIGNED BY THE GENERAL PRESIDENT OF THE APPLICANT CERTIFYING THAT EACH PERSON IS A MEMBER OF THE APPLICANT IN GOOD STANDING.

9. THE BOARD, OF NECESSITY, HAS TO RELY HEAVILY ON THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED IN SUPPORT OF AN APPLICATION FOR CERTIFICATION. FOR THAT REASON, ALTHOUGH THE BOARD HAS NOT MADE IT ABSOLUTELY MANDATORY, IT IS HIGHLY DESIRABLE, AND THE BOARD REQUESTS, THAT RECEIPTS SUBMITTED INDICATING THE PAYMENT OF INITIATION FEES BE SIGNED NOT ONLY BY THE COLLECTORS BUT ALSO COUNTERSIGNED BY THE APPLICANTS FOR MEMBERSHIP. THIS PRECAUTION PROVIDES MORE ADEQUATE PROTECTION FOR BOTH THE BOARD AND THE APPLICANT TRADE UNION WHICH IS RELYING ON THE DOCUMENTARY EVIDENCE. WHERE THERE IS ANY DOUBT ON THE PART OF THE BOARD AS TO THE PROPRIETY OF THE PROCEDURES FOLLOWED BY AN APPLICANT TRADE UNION IN THE SECURING OF THE EVIDENCE OF MEMBERSHIP UPON WHICH IT RELIES, THE ABSENCE OF COUNTERSIGNATURES ON THE RECEIPTS FOR INITIATION FEES MUST WEIGHT HEAVILY AGAINST THE APPLICANT.

10. FOR INSTANCE, IN THE KENNAMETAL TOOLS & MANUFACTURING CO. LIMITED CASE, OLRB M.R. NOVEMBER 1963, P. 422, THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT UNION CONSISTED OF APPLICATIONS AND SEPARATE CORRESPONDING RECEIPTS. THE MEMBERSHIP APPLICATIONS BORE THE SIGNATURES OF THE PERSONS APPLYING FOR MEMBERSHIP. THE RECEIPTS WHICH INDICATED THE PAYMENT OF ONE DOLLAR IN EACH CASE BORE THE SIGNATURES OF THE COLLECTORS AND OSTENSIBLY WERE COUNTERSIGNED BY THE APPLICANTS FOR MEMBERSHIP. THE COUNTERSIGNATURES DID NOT CORRESPOND WITH THE SPECIMEN SIGNATURES FILED BY THE RESPONDENT. THE BOARD AT THE HEARING OF THE

APPLICATION INQUIRED INTO THE DISCREPANCY. THE BOARD WAS INFORMED BY THE REPRESENTATIVE OF THE APPLICANT THAT THE NAMES APPEARING ABOVE THE WORDS "NEW MEMBER'S SIGNATURE" ON THE RECEIPTS, IN FACT, WERE SIGNED BY THE COLLECTORS. BECAUSE OF THE FACT THAT NONE OF THE RECEIPTS SUBMITTED BY THE APPLICANT INDICATING THE PAYMENT OF ONE DOLLAR WERE COUNTERSIGNED AND BECAUSE OF THE NON-DISCLOSURE BY THE APPLICANT WITH RESPECT TO THE COUNTERSIGNATURES, THE BOARD FOUND THAT THE EVIDENCE OF MEMBERSHIP WAS SUFFICIENTLY WEAKENED SO AS TO DISENTITLE THE APPLICANT TO CERTIFICATION WITHOUT THE TAKING OF A REPRESENTATION VOTE.

11. WE WOULD MAKE REFERENCE ALSO TO The Municipal Corporation of the City of Windsor Case, 53 CLLC 1443, WHICH WAS AN APPLICATION FOR CERTIFICATION. AT THE ORIGINAL HEARING, CERTAIN ALLEGATIONS WERE MADE WITH REGARD TO DISCREPANCIES IN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT TRADE UNION. IT WOULD APPEAR FROM THE CONTENT OF THE DECISION THAT THERE WERE NO COUNTERSIGNATURES BY THE APPLICANTS FOR MEMBERSHIP ON THE RECEIPTS SUBMITTED FOR THEM WHICH SHOWED THE PAYMENT OF AN INITIATION FEE. THE BOARD IN THAT CASE APPOINTED AN EXAMINER TO INQUIRE INTO THE ALLEGATIONS AND AS A RESULT OF HIS REPORT, THE BOARD ISSUED SUMMONSES TO SEVERAL WITNESSES. BASED ON THEIR EVIDENCE, THE BOARD DID NOT FIND THAT THE APPLICANT HAD SCHEMED TO DEFRAUD THE BOARD. THE BOARD DID FIND, HOWEVER, THAT THE ORGANIZERS AND OTHER REPRESENTATIVES OF THE APPLICANT EXERCISED EXTREME LAXITY IN OBTAINING THE DOCUMENTARY EVIDENCE OF UNION MEMBERSHIP WHICH IT SUBMITTED WITH ITS APPLICATION. MORE SPECIFICALLY, THE BOARD NOTED IN ITS DECISION THAT FIVE EMPLOYEES HAD TESTIFIED THAT THEY DID NOT PAY UNION INITIATION FEES AS INDICATED ON THE RECEIPTS FILED. THE BOARD ACKNOWLEDGED THAT THIS EVIDENCE WAS DISPUTED BY OTHER WITNESSES. IT CONCLUDED, HOWEVER, FROM THE EVIDENCE TAKEN AS A WHOLE THAT CERTAIN UNION RECEIPTS WERE COMPLETED AND DISTRIBUTED TO EMPLOYEES ON THE STRENGTH OF UNFULFILLED PROMISES FOR FUTURE PAYMENT. MOREOVER, THE BOARD FOUND THAT SOME RECEIPTS WERE ALTERED AS TO DATE BEFORE BEING FILED WITH THE BOARD. IN THOSE PARTICULAR CIRCUMSTANCES, THE BOARD DISMISSED THE APPLICATION.

12. IN THE INSTANT APPLICATION, THE EVIDENCE OF MEMBERSHIP TAKES THE FORM OF COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPT CARDS AND THE SIGNATURES OF THE APPLICANTS FOR MEMBERSHIP DO APPEAR ON THE APPLICATION PORTION OF THE CARDS. THIS IS UNLIKE THE Kennamental Tools & Manufacturing Co. Limited Case (SUPRA) WHERE THE RECEIPTS WERE SEPARATE DOCUMENTS FROM THE APPLICATIONS FOR MEMBERSHIP. MOREOVER, THE RECEIPT PORTION OF THE COMBINATION CARDS SUBMITTED BY THE APPLICANT IN INSTANT CASE BEARS THE WORDS "PAID BY" AND THE NAME OF THE APPLICANT FOR MEMBERSHIP IS PRINTED AFTER THE ABOVE WORDS. AGAIN, THIS IS UNLIKE THE Kennametal Case WHERE THE RECEIPTS BORE THE WORDS "NEW MEMBER'S SIGNATURE". IN THAT CASE, MOREOVER, A SIGNATURE APPEARED ON EACH RECEIPT AFTER THOSE WORDS WHICH, ON ITS FACE, OSTENSIBLY WAS THAT OF

THE NEW MEMBER. ONLY AT THE HEARING OF THE APPLICATION WAS THE DISCLOSURE MADE THAT THE SIGNATURES ON THE RECEIPTS WERE THE SIGNATURES OF THE COLLECTORS AND NOT OF THE NEW MEMBERS. IN THE INSTANT APPLICATION, BY PRINTING THE NAME OF THE APPLICANTS FOR MEMBERSHIP ON THE RECEIPT PORTION OF THE CARD, THE APPLICANT MADE IT UNEQUIVOCALLY CLEAR THAT THE RECEIPTS WERE NOT COUNTERSIGNED. IN OTHER WORDS, THE BOARD IN NO WAY WAS MISLED AS IN THE KENNAMETAL CASE. MOREOVER, IN THE INSTANT CASE, THE APPLICANT SUBMITTED MEMBERSHIP CARDS FOR ALL OF THE PERSONS CONCERNED SIGNED BY THE GENERAL PRESIDENT OF THE APPLICANT CERTIFYING THAT EACH PERSON IS A MEMBER OF THE APPLICANT IN GOOD STANDING IN ADDITION TO THE COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS.

13. IN THE MUNICIPAL CORPORATION OF THE CITY OF WINDSOR CASE (SUPRA) THE BOARD FOUND EXTREME LAXITY ON THE PART OF THE APPLICANT TRADE UNION IN SECURING THE DOCUMENTARY EVIDENCE OF MEMBERSHIP WHICH IT SUBMITTED. THE BOARD, MOREOVER, CONCLUDED THAT THERE WERE IRREGULARITIES IN THE EVIDENCE WITH RESPECT TO THE PAYMENT OF INITIATION FEES. UNLIKE THE CITY OF WINDSOR CASE, THERE IS NO EVIDENCE BEFORE THE BOARD IN THE INSTANT CASE THAT EVEN SUGGESTS IRREGULARITIES IN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT WHICH CREATE ANY MISGIVINGS IN THE MINDS OF THE BOARD AS TO THE PROPRIETY OF THE PROCEDURES FOLLOWED BY THE APPLICANT IN OBTAINING THE EVIDENCE OF MEMBERSHIP WHICH IT HAS SUBMITTED. MORE SPECIFICALLY, NO EVIDENCE WAS PRESENTED OR REPRESENTATIONS MADE WHICH CAUSE THE BOARD TO DOUBT THAT THE PERSONS WHO SIGNED THE APPLICATION PORTION OF THE MEMBERSHIP CARD PAID THE ONE DOLLAR INITIATION FEE SHOWN ON THE RECEIPT PORTION ON THE REVERSE SIDE OF THE CARD.

14. WE WOULD MENTION ALSO THAT FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY, WHICH WAS FILED OVER THE SIGNATURE OF JOHN MEIORIN, THE PRESIDENT OF THE APPLICANT, READS, IN PARAGRAPH 3, THAT ON THE BASIS OF MEIORIN'S PERSONAL KNOWLEDGE AND INQUIRIES THAT HE HAD MADE, THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS AS COLLECTORS WERE THE PERSONS WHO ACTUALLY COLLECTED THE INITIATION FEES, AND THAT EACH MEMBER, ON WHOSE BEHALF A RECEIPT WAS SUBMITTED, HAD PERSONALLY PAID IN MONEY THE AMOUNT SHOWN ON HIS OWN BEHALF. WHILE THE FORM 54, BY ITSELF, IS NOT SUFFICIENT EVIDENCE TO SATISFY THE BOARD THAT THE SPECIFIED INITIATION FEES WERE PAID BY APPLICANTS FOR MEMBERSHIP ON THEIR OWN BEHALF, IT IS SUPPORTING EVIDENCE OF THAT FACT.

15. WE ACCORDINGLY FIND THAT THE ABSENCE OF COUNTERSIGNATURES ON THE RECEIPT PORTION OF THE CARDS, IN THE CIRCUMSTANCES OF THE INSTANT CASE, DOES NOT SO WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO CAUSE THE BOARD TO DIRECT THE TAKING OF A REPRESENTATION VOTE.

16. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 9, 1970, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

17. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER R. W. TEAGLE: JUNE 2, 1970,

ON THE BASIS OF THE KENNAMETAL TOOLS & MANUFACTURING CO. LIMITED CASE, OLRB M.R. NOVEMBER 1963, P. 422, REFERRED TO IN THE MAJORITY DECISION, IT WOULD APPEAR THAT IF THERE IS SOME DEFECT IN THE RECEIPTS, THAT THIS DEFECT WEAKENS THE EVIDENCE OF MEMBERSHIP TO A POINT WHERE A VOTE SHOULD BE HELD TO ASCERTAIN THE TRUE WISHES OF THE EMPLOYEES. AS THE RECEIPTS IN THIS CASE WERE NOT COUNTER-SIGNED I WOULD HAVE ORDERED A VOTE AS WAS DONE IN THE STERLING TILE COMPANY CASE (FEBRUARY 6, 1970, BOARD FILE NO. 17112-69-R).

17321-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. V.C.A. MANUFACTURING OF CANADA LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING; LORNE INGLE AND FORTUNATO RAO FOR THE APPLICANT; P.S.A. LAMEK AND E. HURST FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER J.E.C. ROBINSON, Q.C.: JUNE 9, 1970.

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3. INTER ALIA THE RESPONDENT TOOK THE POSITION AT THE HEARING OF THIS APPLICATION THAT THE APPLICANT'S CONSTITUTION DOES NOT PROVIDE FOR MEMBERSHIP OF PERSONS EMPLOYEDIN THE TYPE OF INDUSTRY IN WHICH THE RESPONDENT IS ENGAGED AND THAT THE APPLICATION SHOULD ACCORDINGLY BE DISMISSED.

4. THE RESPONDENT ESTABLISHED IN ITS EVIDENCE THAT IT WAS ENGAGED SOLELY IN THE PRODUCTION OF ARTICLES MANUFACTURED FROM PLASTICS

AND THAT ITS PROCESSES DID NOT INVOLVE THE FABRICATION OF METAL OF ANY DESCRIPTION. IT ARGUED THAT SUCH BEING THE CASE, THE APPLICANT COULD NOT GRANT MEMBERSHIP TO THE EMPLOYEES OF THE RESPONDENT WHICH THE APPLICANT SEEKS TO REPRESENT, BY REASON OF THE PROVISIONS OF SECTION 1 OF ARTICLE III OF THE CONSTITUTION OF INTERNATIONAL UNION, UNITED STEELWORKERS OF AMERICA WHICH IS IN THE FOLLOWING TERMS:

> "ALL WORKING MEN AND WORKING WOMEN, REGARDLESS OF RACE, CREED, COLOR OR NATIONALITY, EMPLOYED IN AND AROUND AND IN TRANSPORTATION RELATED TO IRON, STEEL, ALUMINUM, NON-FERROUS METAL AND ALLIED MANUFACTURING, MINING, PROCESSING AND FABRICATING MILLS, FACTORIES AND ESTABLISHMENTS, OR IN ANY OTHER PLACE NOW OR HEREAFTER WITHIN THE JURISDICTION OF THE INTERNATIONAL UNION, IN THE UNITED STATES AND CANADA AND INSULAR AREAS ADJACENT THERETO, OR OFFICERS, STAFF REPRESENTATIVES OR EMPLOYEES OF THE INTERNATIONAL UNION, ARE ELIGIBLE TO MEMBERSHIP."

5. THE APPLICANT ARGUED THAT THE EMPLOYEES OF THE RESPONDENT ARE ELIGIBLE FOR MEMBERSHIP BECAUSE THE MANUFACTURING PROCESS CARRIED ON BY THE RESPONDENT WAS "RELATED TO" IRON, STEEL, ALUMINUM, NON-FERROUS METAL AND ALLIED MANUFACTURING, PROCESSING AND FABRICATING MILLS, FACTORIES AND ESTABLISHMENTS. THE BASIS OF THIS ARGUMENT WAS THE FACT THAT THE PLASTIC COMPONENTS MANUFACTURED BY THE RESPONDENT ARE FOR ATTACHMENT TO, AMONG OTHER CONTAINERS, METAL AEROSOL CANS.

6. BY LETTER DATED APRIL 1, 1970, THE ATTENTION OF THE PARTIES WAS DRAWN TO THE PROVISIONS OF THE LABOUR RELATIONS AMENDMENT ACT 1970. THE PARTIES WERE ADVISED THAT IF THEY WISH TO MAKE ANY REPRESENTATIONS CONCERNING THE MATTERS DEALT WITH IN THE ACT WHICH MIGHT AFFECT THE APPLICATION HEREIN, THEY SHOULD FILE THE SAME WITH THE BOARD. NO REPRESENTATIONS WERE RECEIVED FROM EITHER PARTY.

7. ON THE BASIS OF THE EVIDENCE AND THE PROVISIONS OF THE CONSTITUTION TO WHICH THE BOARD WAS REFERRED AND HAVING REGARD TO THE SCOPE OF THE ARGUMENT WITH RESPECT THERETO ADVANCED IN THIS PARTICULAR CASE, WE ARE NOT SATISFIED THAT THE EMPLOYEES OF THE RESPONDENT WHOM THE APPLICANT SEEKS TO REPRESENT TO FULFIL THE ELIGIBILITY REQUIREMENTS OF THE CONSTITUTION OF THE UNITED STEELWORKERS OF AMERICA, AND THE APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER O. HODGES: JUNE 9, 1970.

I DISSENT

1. THE MAJORITY DECISION OFFENDS SECTION 3 OF THE ONTARIO LABOUR RELATIONS ACT:

"EVERY PERSON IS FREE TO JOIN A TRADE UNION OF HIS OWN CHOICE AND TO PARTICIPATE IN ITS LAWFUL ACTIVITIES."

2. THE JURISDICTION CLAIMED BY THE UNION IS NOT A MATTER SUBJECT TO LEGISLATIVE DEFINITION OR LIMITATION. EACH UNION DECIDES ITS JURISDICTIONAL SCOPE, SUBJECT TO REGULATION BY PROCEDURES EXERCISED BY THE CANADIAN LABOUR CONGRESS FOR ITS AFFILIATED , OF WHICH THE APPLICANT UNION IS ONE.

3. IN MAKING APPLICATION FOR CERTIFICATION, THE UNITED STEELWORKERS WOULD BE OBLIGED TO CONSIDER THEIR JURISDICTION IN RELATION TO OTHER UNIONS AFFILIATED TO THE CONGRESS. THAT THE EMPLOYEES OF THIS EMPLOYER WOULD BE ACCEPTED AS MEMBERS IS CONFIRMED BY THE SIMPLE FACT OF ASSIGNING STAFF TO THE ORGANIZING PROJECT.

4. THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IS IN THE FORM OF CARDS REGULARLY USED BY THE UNION, STATING:

"UNITED STEELWORKERS OF AMERICA

I HEREBY REQUEST AND ACCEPT MEMBERSHIP IN THE UNITED STEELWORKERS OF AMERICA, AND OF MY OWN FREE WELL HEREBY AUTHORIZE THE UNITED STEELWORKERS OF AMERICA, ITS AGENTS OR REPRESENTATIVES, TO ACT FOR ME AS A COLLECTIVE BARGAINING AGENCY IN ALL MATTERS PERTAINING TO RATES OF PAY, WAGES, HOURS OF EMPLOYMENT, AND TO ENTER INTO CONTRACTS WITH MY EMPLOYER COVERING ALL SUCH MATTERS.

DATE..... 19... .....
SIGNATURE OF APPLICANT"

5. ARTICLE III, SECTION I OF THE CONSTITUTION OF THE UNITED STEELWORKERS OF AMERICA DOES NOT EXPRESSLY EXCLUDE FROM MEMBERSHIP EMPLOYEES ENGAGED IN THE MANUFACTURE OF ARTICLES OF PLASTIC.

6. THE APPLICANT UNION WAS REPRESENTED AT THE HEARING BY STAFF COUNSEL FROM ITS OWN LEGAL DEPARTMENT. WITH RESPECT TO THE QUESTION OF MEMBERSHIP RAISED BY THE METROPOLITAN LIFE CASE, HE SAID THAT THE CONSTITUTION OF THE UNION WAS ON FILE WITH THE BOARD, AND THAT THE MEMBERSHIP EVIDENCE MET THE REQUIREMENTS OF THE COURT ORDER.

7. I ATTACH NO WEIGHT TO THE CHALLENGE OF COUNSEL FOR THE RESPONDENT EMPLOYER, I.E. THAT "EMPLOYEES WERE ENGAGED IN PLASTIC FABRICATION AND THEREFORE THEY WERE OUTSIDE THE JURISDICTION OF THE UNION ON THE GROUND OF BASIC ELIGIBILITY."

8. The Metropolitan Life case dealt with circumstances substantially different from eligibility based on the product manufactured. In that case only stationary engineers were entitled to membership under the constitution, but a practice of accepting others was attested to and accepted by the Board. The Labour Relations Act was amended to meet the defect found by the Supreme Court.

9. However, in the instant case the union has accepted jurisdiction covering employees who have exercised their fundamental right under Section 3 and have sought and accepted membership in the applicant union, and there is no possible constitutional bar to full membership for these persons whom the union has accepted as members, and consequently no bar under The Ontario Labour Relations Act.

10. The challenge of the respondent to the propriety of the United Steelworkers of America to organize its employees was not reflected by opposition from the employees, since there were no objectors petitioning the Board in response to such invitation apparent to all from the posting of the notice to employees, Board Form #5, Paragraphs 5, 6, 7 and 8.

The testimony of the President of the Companywas that he "expected the Rubber Workers or the Chemical Workers, rather than the Steelworkers." I consider that such a view expresses an interest in the selection of a trade union that is denied the respondent employer under the provisions of Section 48 of the Act, to wit:

> No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of his freedon to express his views so long as he does not use coercion, intimidation, threats, promises or undue influence. R.S.O. 1960, c. 202, s. 48.
>
> (underlining added)

In my view the challenge is misplaced and not a bona fide analysis of the union constitution. In fact the statement of counsel for the respondent in argument supports this view, since he said he "raised the question of eligibility but does not propose to press."

11. The majority decision is a threat to company-wide bargaining when the composition of a conglomerate enterprise is considered. Obviously many manufactured products, all different, may be made by one employer at many different locations, and it may be very desirable, even necessary, for one union to organize to entire complex in order to bargain effectively. On the other hand, several unions may decide to organize the different plants separately for reasons of administration and service to members; i.e. to accommodate staffing to an isolated area.

12. These questions are not subject to effective regulation by legislation, since a great degree of flexibility is necessary to most effectively deal with such practical problems in collective bargaining, and the rapid changes made in the machines, materials and methods used in manufacturing.

13. For all these reasons, but particularly because there is no opposition to this application by the employees, and no intervention by any other trade union, I would certify the applicant union.

17423-69-R: Retail, Wholesale and Department Store Union, AFL:CIO: CLC (Applicant) v. CARLETON CO-OPERATIVE MILK TRANSPORT (Respondent).

BEFORE: O.B. Shime, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: H. Buchanan for the applicant; Michael Gordon for the respondent.

DECISION OF O. B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: June 18, 1970.

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2. Having regard to the agreement of the parties the Board finds that all employees of the respondent at Manotick engaged in driving bulk milk tank trucks, save and except foremen, persons above the rank of foreman and persons regularly employed for not more than 24 hours per week, constitute a unit of employees of the respondent appropriate for collective bargaining.

3. In this matter the respondent submits that the applicant is not entitled to be certified with respect to the employees because of the provisions of its constitution. The applicant is the International Union and it filed its constitution with the Board. The constitution provides inter alia:

Article VII
Membership

SECTION 1. ANY PERSON EMPLOYED IN INDUSTRIES COMING WITHIN THE JURISDICTION OF THIS INTERNATIONAL AS DEFINED IN ARTICLE 11 SHALL BE ELIGIBLE FOR MEMBERSHIP IN THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION. THE APPLICATION FOR MEMBERSHIP SHALL BE MADE TO THE LOCAL UNION OF HIS OR HER BRANCH OF THE TRADE.

SECTION 2. APPLICANTS FOR MEMBERSHIP SHALL FILE THE OFFICIAL APPLICATION FORM PROVIDED FOR THAT PURPOSE, AND SHALL ANSWER ALL RELEVANT QUESTIONS AND SIGN THE PLEDGE TO ABIDE BY ALL LAWS, RULES AND REGULATIONS OF THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION.

ALL APPLICATION CARDS OF LOCAL UNIONS MUST CONTAIN AMONG OTHER THINGS THE FOLLOWING PROVISION: "I AGREE TO BE BOUND BY AND COMPLY WITH THE CONSTITUTION, RULES AND REGULATIONS OF THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AND THE LOCAL UNION."

SECTION 9. (A) ALL MEMBERS OF THE LOCAL UNION ARE MEMBERS OF THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AND ARE SUBJECT TO THE ORDERS, RULINGS AND DECISIONS OF THE INTERNATIONAL UNION AND ITS PROPERLY CONSTITUTED OFFICERS.

(B) SUBJECT TO THE PROVISIONS OF ARTICLE XVII, THE LOCAL UNION TO WHICH THE MEMBER BELONGS IS IRREVOCABLY DESIGNATED, AUTHORIZED AND EMPOWERED BY HIM EXCLUSIVELY TO REPRESENT HIM FOR THE PURPOSE OF COLLECTIVE BARGAINING IN RESPECT TO RATES OF PAY, WAGES HOURS OF EMPLOYMENT OR ANY TERMS OR CONDITIONS OF EMPLOYMENT, AND FOR THE NEGOTIATIONS, EXECUTION, REVISION AND TERMINATION OF CONTRACTS WITH EMPLOYERS COVERING ALL SUCH MATTERS

(C) THE LOCAL UNION TO WHICH THE MEMBER BELONGS IS IRREVOCABLY DESIGNATED, AUTHORIZED AND EMPOWERED BY HIM EXCLUSIVELY TO APPEAR AND ACT FOR HIM AND IN HIS BEHALF BEFORE ANY BOARD, COURT, COMMITTEE OR OTHER TRIBUNAL IN ANY MANNER AFFECTING HIS STATUS AS AN EMPLOYEE OR AS A MEMBER OF HIS LOCAL UNION AND EXCLUSIVELY TO ACT AS HIS AGENT TO REPRESENT OR BIND HIM IN THE PRESENTATION, PROSECUTION, ADJUSTMENT OR SETTLEMENT OF ALL GRIEVANCES, COMPLAINTS, DISPUTES OF ANY KIND

OR CHARACTER ARISING OUT OF THE EMPLOYER AND EMPLOYEE RELATIONSHIP AS FULLY AND TO ALL INTENTS AND PURPOSES AS HE MIGHT OR COULD DO IF PERSONALLY PRESENT.

(D) THE POWER GIVEN TO THE LOCAL UNDER CLAUSES (B) AND (C) HEREOF MAY WITH CONSENT OF THE LOCAL UNION BE EXERCISED BY THE INTERNATIONAL UNION AND REPRESENTATIVES THEREOF.

4. IT HAS BEEN THE PRACTICE IN APPLICATIONS FOR CERTIFICATION BEFORE THIS BOARD THAT THE INTERNATIONAL UNION BE THE APPLICANT AND THAT AFTER CERTIFICATION THE MEMBERS ARE ASSIGNED TO PARTICULAR LOCAL UNIONS. THE REPRESENTATIVE OF THE INTERNATIONAL UNION INDICATED THAT THIS HAD BEEN THE PRACTICE BEFORE THIS BOARD FOR MANY YEARS AND THAT HE WAS HERE AS A REPRESENTATIVE OF THE INTERNATIONAL UNION WITH THE CONSENT OF THE LOCAL UNIONS. ARTICLE VII SECTION 9(D) OF THE CONSTITUTION MAKES PROVISION FOR THIS ARRANGEMENT.

5. THE SHORT ANSWER TO THE OBJECTION RAISED IS THAT THE EMPLOYEES WERE AT ALL MATERIAL TIMES MEMBERS OF THE APPLICANT WHICH IS THE PRIME FACTOR CONCERNING THIS BOARD UNDER SECTION 7 OF THE LABOUR RELATIONS ACT. WHILE THE CONSTITUTION SUGGESTS THAT PERSONS BECOME MEMBERS OF LOCAL UNIONS, IT IS CLEAR THAT THEY ARE AT THE SAME TIME ALSO MEMBERS OF THE INTERNATIONAL UNION AND THEY ARE BOUND TO COMPLY WITH THE CONSTITUTION, RULES AND REGULATIONS OF BOTH THE INTERNATIONAL UNION AND THE LOCAL UNION.

6. FURTHER, BY VIRTUE OF THE PROVISIONS IN THE LABOUR RELATIONS ACT SECTION 1(1)(GA) A MEMBER OF THE TRADE UNION IS A PERSON WHO HAS APPLIED FOR MEMBERSHIP IN THE TRADE UNION AND HAS PAID TO THE TRADE UNION ON HIS OWN BEHALF AN AMOUNT OF AT LEAST $1.00 IN RESPECT OF INITIATION FEES OR MONTHLY DUES OF THE TRADE UNION. THAT REQUIREMENT HAS BEEN SATISFIED IN THIS CASE.

7. WE ARE ALSO SATISFIED THAT SECTION 77(4) OF THE LABOUR RELATIONS ACT IS RELEVANT. THAT SECTION PROVIDES:

(4) WHERE THE BOARD IS SATISFIED THAT A TRADE UNION HAS AN ESTABLISHED PRACTICE OF ADMITTING PERSONS TO MEMBERSHIP WITHOUT REGARD TO THE ELIGIBILITY REQUIREMENTS OF ITS CHARTER, CONSTITUTION OR BY-LAWS, THE BOARD, IN DETERMINING WHETHER A PERSON IS A MEMBER OF A TRADE UNION, NEED NOT HAVE REGARD FOR SUCH ELIGIBILITY REQUIREMENTS.

HAVING REGARD TO THE SUBMISSIONS, WE FIND THAT THE APPLICANT HAS AN ESTABLISHED PRACTICE OF ADMITTING PERSONS TO MEMBERSHIP WITHOUT

REGARD TO THE ELIGIBILITY REQUIREMENTS OF ITS CONSTITUTION AND ACCORDINGLY WE ARE NOT DISPOSED TO HAVE REGARD FOR THE ELIGIBILITY REQUIREMENTS IN THIS CASE.

8. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES AND FOR THE REASONS INDICATED WE ARE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE US THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 5TH, 1970, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON, Q.C. JUNE 18, 1970.

THE APPLICANT IN THE INSTANT CASE IS RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, A.F.L.-C.I.O.-C.L.C.

THE CARDS FILED IN SUPPORT OF THE APPLICATION SIGNED BY THE RESPECTIVE APPLICANTS FOR MEMBERSHIP STATES:

> "RETAIL, WHOLESALE & DEPARTMENT STORE UNION
> A.F.L.-C.I.O.-C.L.C.
>
> I HEREBY REQUEST AND ACCEPT MEMBERSHIP IN THE RETAIL, WHOLESALE & DEPARTMENT STORE UNION AND PROMISE TO ABIDE BY THE BY-LAWS OF THE UNION AND THE CONSTITUTION OF THE INTERNATIONAL UNION. I AUTHORIZE THE UNION TO REPRESENT ME IN ANY NEGOTIATIONS CONCERNING WAGES, HOURS AND WORKING CONDITIONS WITH MY EMPLOYER."

IT HAS BEEN A LONG TIME POLICY OF THIS BOARD THAT MEMBERSHIP IN A PARENT INTERNATIONAL UNION IS NOT MEMBERSHIP IN A LOCAL UNION OF SUCH INTERNATIONAL UNION.

THE WORDING OF THE APPLICANT'S CONSTITUTION IS CLEAR AND UNAMBIGUOUS.

ARTICEL VII ENTITLED "MEMBERSHIP" STATES INTER ALIA:

SECTION 1. ANY PERSON EMPLOYED IN INDUSTRIES COMING WITHIN THE JURISDICTION OF THIS INTERNATIONAL AS DEFINED IN ARTICLE II SHALL BE ELIGIBLE FOR MEMBERSHIP IN THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION. THE APPLICATION FOR MEMBERSHIP SHALL BE MADE TO THE LOCAL UNION OF HIS OR HER BRANCH OF THE TRADE.

SECTION 2. APPLICANTS FOR MEMBERSHIP SHALL FILE THE OFFICIAL APPLICATION FORM PROVIDED FOR THAT PURPOSE, AND SHALL ANSWER ALL RELEVANT QUESTIONS AND SIGN THE PLEDGE TO ABIDE BY ALL LAWS, RULES AND REGULATIONS OF THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION.

SECTION 6. NO APPLICANT SHALL BE ENTITLED TO THE RIGHTS AND PRIVILEGES OF MEMBERSHIP UNTIL HIS INITIATION FEE HAS BEEN PAID IN FULL AND UNTIL HE HAS BEEN FORMALLY NOTIFIED THAT HE HAS BEEN ADMITTED INTO MEMBERSHIP IN THE LOCAL UNION TO WHICH HE HAS APPLIED. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONSTITUTION, DURING AN ORGANIZATIONAL DRIVE IN CANADA, AN APPLICANT UPON PAYMENT OF SUCH INITIATION FEE, SHALL BE CONSIDERED IN GOOD STANDING FOR A PERIOD TO BE DETERMINED BY THE LOCAL OR OTHER SUBORDINATE BODY, BUT IN NO EVENT BEYOND THE EXECUTION OF A FIRST COLLECTIVE BARGAINING AGREEMENT.

SECTION 9. (A) ALL MEMBERS OF THE LOCAL UNION ARE MEMBERS OF THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AND ARE SUBJECT TO THE ORDERS, RULINGS AND DECISIONS OF THE INTERNATIONAL UNION AND ITS PROPERLY CONSTITUTED OFFICERS.

(B) SUBJECT TO THE PROVISIONS OF ARTICLE XVII, THE LOCAL UNION TO WHICH THE MEMBER BELONGS IS IRREVOCABLY DESIGNATED, AUTHORIZED AND EMPOWERED BY HIM EXCLUSIVELY TO REPRESENT HIM FOR THE PURPOSE OF COLLECTIVE BARGAINING IN RESPECT TO RATES OF PAY, WAGES, HOURS OF EMPLOYMENT OR ANY TERMS OR CONDITIONS OF EMPLOYMENT, AND FOR THE NEGOTIATIONS, EXECUTION, REVISION AND TERMINATION OF CONTRACTS WITH EMPLOYERS COVERING ALL SUCH MATTERS.

(c) THE LOCAL UNION TO WHICH THE MEMBER BELONGS IS IRREVOCABLY DESIGNATED, AUTHORIZED AND EMPOWERED BY HIM EXCLUSIVELY TO APPEAR AND ACT FOR HIM AND IN HIS BEHALF BEFORE ANY BOARD, COURT, COMMITTE OR OTHER TRIBUNAL IN ANY MANNER AFFECTING HIS STATUS AS AN EMPLOYEE OR AS A MEMBER OF HIS LOCAL UNION AND EXCLUSIVELY TO ACT AS HIS AGENT TO REPRESENT OR BIND HIM IN THE PRESENTATION, PROSECUTION, ADJUSTMENT OR SETTLEMENT OF ALL GRIEVANCES, COMPLAINTS, DISPUTES OF ANY KIND OR CHARACTER ARISING OUT OF THE EMPLOYER AND EMPLOYEE RELATIONSHIP AS FULLY AND TO ALL INTENTS AND PURPOSES AS HE MIGHT OR COULD DO IS PERSONALLY PRESENT.

(d) THE POWER GIVEN TO THE LOCAL UNION UNDER CLAUSES (B) AND (C) HEREOF MAY WITH CONSENT OF THE LOCAL UNION BE EXERCISED BY THE INTERNATIONAL UNION AND REPRESENTATIVES THEREOF.

ARTICLE VIII ENTITLED "LOCAL UNIONS" STATES INTER ALIA:

SECTION 6. LOCAL UNIONS SHALL BE RESPONSIBLE FOR ENFORCING THE PROVISIONS OF THIS CONSTITUTION AND ANY LAWS AND ORDERS AFFECTING ITS MEMBERSHIP.

SECTION 10. NO LOCAL UNION SHALL MAKE CONTRACTS OR INCUR LIABILITIES FOR THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION UNLESS AUTHORIZED IN WRITING BY THE INTERNATIONAL EXECUTIVE BOARD. THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION SHALL NOT BE LIABLE UNDER SUCH CONTRACTS UNLESS SO AUTHORIZED.

IT IS CLEAR FROM THE APPLICANT'S CONSTITUTION THAT SUCH CONSTITUTION CONTEMPLATES THAT APPLICATIONS FOR CERTIFICATION SHALL BE MADE BY LOCAL UNIONS.

THERE BEING NO EVIDENCE IN THE PRESENT CASE THAT A LOCAL UNION DESIGNATED THE APPLICANT TO MAKE THIS APPLICATION, NOR INDEED ANY EVIDENCE THAT A LOCAL UNION EVEN EXISTS TO REPRESENT THE EMPLOYEES WHO ARE THE SUBJECT OF THIS APPLICATION, I WOULD FIND THAT ACCORDING TO ITS CONSTITUTION, THE APPLICANT LACKS THE CAPACITY TO REPRESENT SUCH PERSONS AND WOULD ACCORDINGLY HAVE DISMISSED THIS APPLICATION.

17447-69-R: Division 107, Amalgamated Transit Union, Hamilton, Ontario (Applicant) v. CHARTERWAYS CO. LTD. (Respondent).

BEFORE: J. D. O'Shea, Q.C., Vice-Chairman, and Board Members O. Hodges and H. F. Irwin.

DECISION OF THE BOARD: June 17, 1970.

1. This is an application for certification in which the respondent raised the issue that the respondent's labour relations appear to be subject to the jurisdiction of the Canada Labour Relations Board. Since the applicant was unable to agree to the description of the respondent's operations, the Board appointed an Examiner to inquire into the composition of the bargaining unit in this matter and more particularly on the nature of the respondent's operations. Subject to the Examiner's appointment, the applicant applied to the Canada Labour Relations Board to be certified as bargaining agent for the employees of the respondent with whom we are here concerned.

2. The respondent by letter dated May 26, 1970 objected to the subsequent application by the applicant and suggested that it "is an abuse of process and puts the Labour Relations Board and the Respondent to needless and unwarranted proceedings and expense." The respondent therefore requested that the instant application be dismissed.

3. The applicant took the position that since the respondent would not categorically acknowledge that its labour relations were governed by The Industrial Relations and Disputes Investigation Act, it was entitled to apply before both tribunals until such time as a determination was made with respect to this matter. However, the applicant requested that the Board withhold any ruling in this matter until its application to the Canada Labour Relations Board has been disposed of.

4. The respondent by letter dated June 11, 1970 once again submitted that the application should be dismissed since the applicant has elected to proceed before the Canada Labour Relations Board and "has thereby waived its entitlement to proceed with the Application herein."

5. The Board is unable to agree with the respondent's contention that the applicant has waived its right to proceed before this Board when it made its application to the Canada Labour Relations Board. While this Board is not bound by the decision of the Canada Labour Relations Board with respect to its jurisdiction, it may well

BE THAT A DECISION BY THE CANADA LABOUR RELATIONS BOARD WILL SATISFY THE APPLICANT IN THIS MATTER AND WILL OBLIVIATE THE NECESSITY OF THE RESPONDENT INCURRING FURTHER EXPENSE AND TIME WHICH WOULD BE INVOLVED IN PROCEEDING WITH THE APPLICATION BEFORE THIS BOARD. HAVING REGARD TO THE SUGGESTION OF THE APPLICANT AND WITH THE VIEW OF MITIGATING ANY LOSS IN TIME AND MONEY WHICH MAY BE SUFFERED BY THE RESPONDENT AS A RESULT OF THE INSTANT APPLICATION, THE BOARD POSTPONES FURTHER CONSIDERATION OF THE APPLICATION IN THIS MATTER UNTIL SUCH TIME AS THE APPLICANT'S APPLICATION TO THE CANADA LABOUR RELATIONS BOARD HAS BEEN DISPOSED OF.

6. THE BOARD DIRECTS THE APPLICANT TO ADVISE THE BOARD WHEN A DECISION HAS BEEN REACHED BY THE CANADA LABOUR RELATIONS BOARD.

17555-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. SAGA INVESTMENTS (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

APPEARANCES AT THE HEARING: A. M. MINSKY AND TONY SPADA FOR THE APPLICANT; B. W. BINNING, D. EADIE AND J. CARRIERE FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 1, 1970.

1. IN A DECISION OF THE BOARD DATED APRIL 6, 1970, A CERTIFICATE ISSUED TO THE APPLICANT. AFTER THE ISSUANCE OF THE CERTIFICATE THE RESPONDENT INFORMED THE BOARD THAT IT HAD NOT RECEIVED NOTICE OF THE APPLICATION FOR CERTIFICATION UNTIL APRIL 9, 1970 AND THEREFORE HAD NOT HAD AN OPPORTUNITY TO FILE A REPLY BEFORE THE ISSUANCE OF THE CERTIFICATE.

2. WHILE THERE WAS SOME DISPUTE AS TO THE REASON WHY THE RESPONDENT HAD NOT RECEIVED NOTICE OF THE APPLICATION FOR CERTIFICATION PRIOR TO APRIL 3, 1970, THE TERMINAL DATE OF THIS APPLICATION FOR CERTIFICATION; COUNSEL FOR THE APPLICANT AND THE RESPONDENT AGREED THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION FOR CERTIFICATION HAD NOT HAD AN OPPORTUNITY TO SEE THE FORM 52, NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY. THE EMPLOYEES AFFECTED BY THIS APPLICATION, THEREFORE, WERE NEITHER INFORMED OF THIS APPLICATION FOR CERTIFICATION NOR THEIR RIGHTS IN CONNECTION THEREWITH.

3. HAVING REGARD TO THE FOREGOING, THE BOARD REVOKES ITS DECISION IN THIS MATTER DATED APRIL 6, 1970, AND THE CERTIFICATE ISSUED THEREUNDER.

4. In the circumstances of this case, the Registrar is directed to extend the terminal date in this matter to Monday, June 8, 1970.

17602-70-R: Retail Clerks International Association (Applicant) v. CHAPPLES STORES LIMITED (Respondent).

BEFORE: J. D. O'Shea, Q.C., Vice-Chairman, and Board Members H. F. Irwin and P. J. O'Keeffe.

DECISION OF THE BOARD: June 3, 1970.

The Board revokes its decision of April 29, 1970, and substitutes the following therefor:

1. The name "Chapples Stores Ltd. Chapples Bldg., corner Syndicate and Arthur, Postal Station F Thunder Bay" appearing in the style of cause of this application as the name of the respondent is amended to read: "Chapples Stores Limited".

2. The Board finds that the applicant is a trade union within the meaning of section 1(1)(j) of The Labour Relations Act.

3. The Board further finds that all employees of the respondent at Marathon, save and except branch store manager, persons above the rank of branch store manager, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining, hereinafter referred to as bargaining unit #1.

. . .

5. A certificate will issue to the applicant with respect to bargaining unit #1.

6. The Board further finds that all employees of the respondent at Marathon regularly employed for not more than 24 hours per week and students employed during the school vacation period constitute a unit of employees of the respondent appropriate for collective bargaining, hereinafter referred to as bargaining unit #2.

. . .

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO BARGAINING UNIT #2.

9. IT IS NOTED THAT THE RESPONDENT REQUESTED THE EXCLUSION OF "PERSONS HIRED EXPRESSLY FOR THE CHRISTMAN AND EASTER SHOPPING PERIODS, OR FOR THE STORE VACATION PERIOD". THE APPLICANT DID NOT AGREE TO THE EXCLUSION OF SUCH PERSONS. SINCE THE EXCLUSIONS SOUGHT BY THE RESPONDENT ARE NOT CLASSIFICATIONS WHICH THE BOARD NORMALLY EXCLUDES FROM DESCRIPTIONS OF BARGAINING UNITS AND THERE IS NOTHING IN THE LABOUR RELATIONS ACT WHICH WOULD PERMIT THE BOARD TO DENY COLLECTIVE BARGAINING TO SUCH CLASSES OF PERSONS, THE BOARD IS UNABLE TO ACCEDE TO THE RESPONDENT'S REQUEST. WHILE IT IS RECOGNIZED THAT PERSONS WHO MIGHT BE EMPLOYED IN THE CLASSIFICATIONS WHICH THE RESPONDENT SEEKS TO EXCLUDE ARE USUALLY ONLY EMPLOYED FOR SHORT PERIODS OF TIME, THE BOARD MUST LEAVE THE QUESTION OF SHORT-TERM EMPLOYEES OR PROBATIONARY EMPLOYEES TO COLLECTIVE BARGAINING BETWEEN THE PARTIES. ACCORDINGLY, THE BOARD IS NOT PREPARED TO EXCLUDE SUCH PERSONS FROM THE BARGAINING UNIT IN THIS MATTER.

17638-70-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. REAL BINETTE CONSTRUCTION LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JUNE 4, 1970.

1. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT FILED THREE COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. THE COMBINATION APPLICATIONS FOR MEMBERSHIP ARE SIGNED BY THE EMPLOYEES AND THE RECEIPTS ARE COUNTERSIGNED AND INDICATE THAT A PAYMENT OF AT LEAST $1.00 HAS BEEN MADE WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE MONEY WAS COLLECTED BY ONE PERSON. THE APPLICANT ALSO FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

2. THE RESPONDENT FILED A REPLY, A LIST OF EMPLOYEES CONTAINING NINE NAMES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. SPECIMEN SIGNATURES WERE FILED AFTER THE TERMINAL DATE.

. . .

5. In its reply the respondent proposed the exclusion of "any working foreman and persons above the rank of any working foreman". The usual exclusions from craft bargaining units determined by the Board (such as the one the applicant is seeking in this case) are "non-working foremen and persons above the rank of non-working foreman". The practice of the Board of including working foremen in craft bargaining units is based upon a long experience that persons so designated normally do not exercise managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act. Reference is made to the Babcock & Wilcox Canada Ltd. case, Board File #17358-69-R. The Board notes that the respondent has not alleged in its reply that any working foremen in its employ exercise managerial functions. The Board therefore, further finds that all construction labourers in the employ of the respondent in the United Counties of Stormont, Dundas and Glengarry, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

6. After meetings conducted by the examiner, the parties signed the following agreement:

> The parties agree that the respondent employed 5 labourers at the work sites (Area 31) as of April 15th, 1970, namely:
>
> Bruno Pare
> Paul-Emile Lamarche
> Gaetan Nadeau
> Raymond Langlois
> Leo Delorme.

A copy of this agreement is on file with the Board. The parties further agreed that it would not be necessary to issue a formal report in this matter.

7. The names that appear on the three combination applications for membership and receipts filed by the applicant correspond to three of the names that appear on the agreed list of five labourers mentioned in paragraph six. The Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in the bargaining unit at the time the application was made were members of the applicant on April 23, 1970,

THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. IN PARAGRAPH 14(3) OF ITS REPLY THE RESPONDENT REQUESTED A HEARING AND STATED:

> THAT OF THE NINE PERSONS ELIGIBLE FOR CERTIFICATION, A MAJORITY OF EMPLOYEES HAVE SUGGESTEDTO ME THAT THEY DO NOT WANT TO BELONG TO ANY BARGAINING UNIT AND THAT CONSEQUENTLY, THE APPLICANT DOES NOT HAVE THE REQUIRED NUMBER OF EMPLOYEES BELONGING TO THE SAID TRADE UNION OR WHO WANT TO BECOME MEMBERS OF THE SAID TRADE UNION, AND CONSEQUENTLY, A GREATER MAJORITY OF EMPLOYEES DOES NOT WISH THE APPLICANT HEREIN TO BECOME THE BARGAINING AGENT OF THE EMPLOYEES. THE RESPONDENT STATES BY REASON OF SUCH FACTS, THE APPLICANT HEREIN IS NOT ENTITLED TO APPLY TO THE BOARD FOR CERTIFICATION AS BARGAINING AGENT OF THE EMPLOYEES OF THIS RESPONDENT.
>
> THE RESPONDENT FURTHER STATES THAT HE WILL FILE WITH THE BOARD AT THE HEARING AFFIDAVIT EVIDENCE AND VIVA VOCE EVIDENCE, IF NECESSARY, TO THE FACT THAT THE APPLICANT HEREIN, IS NOT REPRESENTATIVE AS A BARGAINING AGENT SINCE IT REPRESENTS MUCH LESS THAN A MAJORITY OF EMPLOYEES EMPLOYED BY THE RESPONDENT AS CONSTRUCTION LABOURERS.

WITH RESPECT TO THE PROFESSED WISHES OF THE EMPLOYEES AFFECTED BY THIS APPLICATION FOR CERTIFICATION AS ALLEGED BY THE RESPONDENT, THE BOARD POINTS OUT THAT THE APPLICANT HAS FILED WITH THE BOARD THE EVIDENCE OF MEMBERSHIP INDICATED IN PARAGRAPH ONE. THE EMPLOYEES AFFECTED BY THIS APPLICATION WERE NOTIFIED OF IT BY MEANS OF THE POSTING OF FORM 52,

Notice To Employees of Application for Certification, Construction Industry. Indeed, the President of the Respondent advised the Board on a Return of Posting Card (Form 47) that on April 21, 1970, he did on the premises of the Respondent posttwo notices to the employees in this matter in conspicuous places where they are most likely to come to the attention of all employees who may be affected by the application. Form 52 informs the employees who may be affected by the application of the steps which may be taken if they wish to oppose the application for certification. The Board has not received any representations from the employees affected by this application. On the point raised by the Respondent with regard to the filing of affidavit evidence and viva voce evidence at a hearing with respect to representation by the applicant, the Board points out that evidence of membership in a trade union or of objection by employees to certification of a trade union is required to be in writing and filed not later than the terminal date for the application - see section 48 of the Board's Rules of Procedure.

The Board is not required to hold a hearing in applications for certification filed under the construction industry provisions of The Labour Relations Act - reference is made to section 75(9a). It is the practice of the Board to hold hearings in such applications when a useful purpose would be served by so doing. In the present application no useful purpose would be served in holding a hearing and accordingly the request of the Respondent for a hearing is denied. If the Respondent considers that the Board has erred in some material way, it is open to the Respondent to request the Board to reconsider its decision under the provisions of section 79(1) of The Labour Relations Act.

9. In the result, therefore, a certificate will issue to the applicant.

17655-70-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. MOIR CONSTRUCTION COMPANY LIMITED (Respondent).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members P. J. O'Keeffe and J. E. C. Robinson, Q.C.

APPEARANCES AT THE HEARING: W. Hague and W. Crosbie for the applicant; and no one appearing for the respondent.

DECISION OF THE BOARD: June 16, 1970.

1. The applicant applied on April 17th, 1969, for certification

FOR A BARGAINING UNIT OF ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMEN.

2. AT THE OUTSET OF THE HEARING, HOWEVER, THE REPRESENTATIVES OF THE APPLICANT ADOPTED THE POSITION THAT IN THE EVENT THAT THE BOARD SHOULD FIND THAT THE GREATER NIAGARA ONTARIO CARPENTERS DISTRICT COUNCIL (HEREINAFTER CALLED THE "COUNCIL") HAD BARGAINING RIGHTS FOR CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE JURISDICTIONAL AREA OF THE COUNCIL, THEN, THE APPLICANT DID NOT WISH TO PROCCEED WITH THIS APPLICATION FOR CERTIFICATION.

3. THE EVIDENCE ESTABLISHED THAT AT THE COMMENCEMENT OF BARGAINING IN 1968, THE COUNCIL SUBMITTED A TYPE-WRITTEN LIST OF EMPLOYERS TO THE NIAGARA CONSTRUCTION ASSOCIATION (HEREINAFTER CALLED THE "ASSOCIATION"). A REPRESENTATIVE OF THE COUNCIL ASKED THE ASSOCIATION IF THIS WAS A CORRECT LIST OF THEIR MEMBERSHIP ON WHOSE BEHALF THE ASSOCIATION WAS BARGAINING WITH THE COUNCIL. THE ASSOCIATION INFORMED THE COUNCIL THAT IT WAS BARGAINING FOR ALL OF THE EMPLOYEES ON THE ABOVE-MENTIONED LIST WITH THE EXCEPTION OF BEAMSVILLE CONSTN. LTD. WHICH WAS BARGAINING WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA. THE NAME OF THE RESPONDENT APPEARED ON THE ABOVE-MENTIONED LIST. PRIOR TO 1968 THE RESPONDENT HAD ALSO BEEN A MEMBER OF THE ASSOCIATION AND ITS PREDECESSOR THE NIAGARA PENINSULA BUILDERS EXCHANGE WHICH HAD BARGAINED FOR THE RESPONDENT WITH THE COUNCIL AND ENTERED INTO COLLECTIVE AGREEMENTS WITH THE COUNCIL ON BEHALF OF THE RESPONDENT. THERE WAS NO EVIDENCE BEFORE THE BOARD THAT THE ASSOCIATION HAD DELIVERED TO THE COUNCIL DURING THE COLLECTIVE BARGAINING IN 1968, A LIST OF THE NAMES OF THE EMPLOYERS ON WHOSE BEHALF IT WAS BARGAINING. INDEED, THE EVIDENCE BEFORE THE BOARD INDICATES THAT THE ASSOCIATION HAD INFORMED THE COUNCIL THAT IT WAS BARGAINING ON BEHALF OF A GROUP OF EMPLOYERS WHICH INCLUDED THE RESPONDENT. SIMILARLY, THERE WAS NO EVIDENCE BEFORE THE BOARD THAT THE RESPONDENT, EITHER BY ITSELF OR THROUGH THE ASSOCIATION, HAD NOTIFIED THE COUNCIL IN WRITING BEFORE THE COLLECTIVE AGREEMENT WAS ENTERED INTO THAT IT WOULD NOT BE BOUND BY IT. HAVING REGARD TO THE PROVISIONS OF SECTIONS 38(1) AND 38(2) OF THE LABOUR RELATIONS ACT, THE BOARD FINDS THAT THE COLLECTIVE AGREEMENT BETWEEN THE COUNCIL AND THE ASSOCIATION OPERATIVE FROM SEPTEMBER 29, 1968 UNTIL APRIL 30, 1970 WAS BINDING ON THE RESPONDENT AND THAT THE COUNCIL HAD BARGAINING RIGHTS FOR CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE JURISDICATIONAL AREA OF THE COUNCIL.

5. HAVING REGARD TO THE FOREGOING, AND THE REPRESENTATIONS OF THE APPLICANT THESE PROCEEDINGS ARE HEREBY TERMINATED.

17751-70-R: THE CANADIAN UNION OF MANUFACTURING EMPLOYEES (APPLICANT) v. HORN ELEVATOR LIMITED (RESPONDENT) v. LOCAL 1590 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (INTERVENER #1) v.

DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (INTERVENER #2).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J.E.C. ROBINSON, Q.C..

APPEARANCES AT THE HEARING: E. G. POSEN, B. CHERCOVER, JOHN MARTIN, DAVE HUBBARD AND MARGARET SORLEY FOR THE APPLICANT, B. W. BINNING AND B. STINSON FOR THE RESPONDENT, R. KOSKIE, MORLEY E. FISHER AND GEORGE PETTA FOR INTERVENER #1, L. H. ROSEN AND R. MCLEOD FOR INTERVENER #2.

DECISION OF THE BOARD: JUNE 19, 1970.

1. THE APPLICANT APPLIED ON MAY 4, 1970 TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT WHO ARE CURRENTLY REPRESENTED BY INTERVENER #1.

2. AT THE HEARING HELD ON JUNE 4, 1970, THE APPLICANT CALLED EVIDENCE CONCERNING THE MANNER IN WHICH THE APPLICANT WAS FORMED. IT WAS ESTABLISHED THAT CERTAIN EMPLOYEES OF THE RESPONDENT HELD A MEETING ON APRIL 29, 1970 AT WHICH THE NAME OF THE APPLICANT WAS APPROVED AND A CONSTITUTION WAS ADOPTED. THE EMPLOYEES IN ATTENDANCE NOMINATED A PERSON TO ACT AS TEMPORARY PRESIDENT AND ANOTHER TO ACT AS TEMPORARY SECRETARY "UNTIL THE FORMAL ELECTION OF OFFICERS PURSUANT TO THE CONSTITUTION". TWO EMPLOYEES WERE ELECTED BY ACCLAMATION TO FILL THESE TWO OFFICES. THE MEETING WAS ADJOURNED AND ALL SIXTEEN EMPLOYEES WHO WERE IN ATTENDANCE AT THE MEETING SIGNED APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT AND PAID $1.00 ON ACCOUNT OF INITIATION FEES. THE MEETING WAS THEN RECONVENED AND A MOTION WAS ADOPTED WHEREBY ALL SIXTEEN PERSONS WHO HAD SIGNED THE MEMBERSHIP CARDS WERE ADMITTED INTO MEMBERSHIP AND THE OATH OF MEMBERSHIP WAS ADMINISTERED BY THE TEMPORARY PRESIDENT. A MOTION WAS THEN MOVED AND ADOPTED WHEREBY THE SELECTION OF THE APPLICANT'S NAME, THE ADOPTION OF THE CONSTITUTION AND THE ELECTION OF OFFICERS WERE RATIFIED. AFTER THE ORGANIZATIONAL MEETING ADDITIONAL EMPLOYEES APPLIED FOR MEMBERSHIP AND ON MAY 10, 1970, A SECOND MEETING OF THE MEMBERS WAS HELD AT WHICH NEW OFFICERS WERE ELECTED.

3. INTERVENER #1 STRENUOUSLY ARGUED THAT THE BOARD SHOULD NOT FIND THAT THE APPLICANT WAS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE ACT ON MAY 4, 1970, THE DATE THIS APPLICATION WAS MADE, AND SHOULD ACCORDINGLY DISMISS THIS APPLICATION. INTERVENER #1 ARGUED THAT THE OFFICERS OF THE APPLICANT MUST BE ELECTED PURSUANT TO THE PROVISIONS OF THE

APPLICANT'S CONSTITUTION. THE APPLICANT'S CONSTITUTION DOES NOT PROVIDE FOR "TEMPORARY" OFFICERS. IN ADDITION, THE OFFICERS MUST BE INSTALLED IN ACCORDANCE WITH THE RITUAL REFERRED TO IN THE CONSTITUTION AND THERE WAS NO EVIDENCE THAT THIS WAS DONE. AGAIN, THE CONSTITUTION PROVIDES THAT THE APPLICANT "SHALL BE ADMINISTERED BY ITS EXECUTIVE COMMITTEE UNDER THE GUIDANCE OF THE GENERAL MEETING OF THE MEMBERSHIP". THE CONSTITUTION FURTHER PROVIDES THAT THE EXECUTIVE COMMITTEE SHALL BE COMPOSED OF A PRESIDENT, A VICE-PRESIDENT, A SECRETARY AND A TREASURER. SINCE THERE WERE ONLY TWO OFFICERS ELECTED AT THE TIME THE APPLICATION WAS MADE, INTERVENER #1 ARGUED THERE WAS THEREFORE NO EXECUTIVE COMMITTEE AS CONTEMPLATED BY THE CONSTITUION AND ACCORDINGLY THERE WAS NO WAY TO ADMINISTER THE APPLICANT'S AFFAIRS. INTERVENER #1 TOOK THE POSITION THAT THE APPLICANT WAS THEREFORE NOT A VIABLE ENTITY AT THE TIME THE APPLICANT WAS MADE.

4. IN SUPPORT OF ITS ARGUMENTS, INTERVENER #1 REFERRED THE BOARD TO SEVERAL DECISIONS, INCLUDING BLUE BELL CANADA LIMITED CASE, OLRB MONTHLY REPORT, FEBRUARY 1966, P. 809; BORG FABRICS LIMITED CASE, OLRB MONTHLY REPORT, DECEMBER 1966, P. 693; TRIPLE F FORMING LIMITED CASE, OLRB MONTHLY REPORT, FEBRUARY 1970, P. 1344, AND THE CASES THEREIN REFERRED TO.

5. WHILE IT MAY BE SAID THAT THE CONSTITUTION OF AN ORGANIZATION IS THE SOURCE OF ITS EXISTENCE, IT MUST BE RECOGNIZED THAT IT WOULD BE VERY UNUSUAL FOR A CONSTITUTION TO PROVIDE FOR THE MANNER IN WHICH THE ORGANIZATION WHICH ADOPTS THE CONSTITUTION IS TO BE CREATED. WHEN A CONSTITUTION IS READ IT IS READILY APPARENT THAT THE CONSTITUTION PROVIDES FOR THE MANNER IN WHICH THE AFFAIRS OF THE ORGANIZATION ARE TO BE CARRIED ON IN FUTURE. A CONSTITUTION PRESUMES THE EXISTENCE OF THE ORGANIZATION AND DOES NOT PROVIDE FOR THE MANNER IN WHICH AN ORGANIZATION COMMENCES ITS EXISTENCE. AS AN EXAMPLE OF THIS PRESUMPTION, ONE NEED ONLY READ THE USUAL CONDITIONS FOR MEMBERSHIP, AN EXAMPLE OF WHICH CAN BE SEEN IN THE CONSTITUTION FILED IN THE INSTANT CASE, AND COMPARE SUCH CONDITIONS WITH THE CONDITIONS FOR HOLDING OFFICE IN THE UNION. ONE OF THE CONDITIONS OF BECOMING A MEMBER IS THAT A MEMBER MUST PAY THE ENTRANCE FEE TO THE TREASURER. A CONDITION OF HOLDING ANY OFFICE IN THE ASSOCIATION IS THAT THE PERSON HOLDING OFFICE MUST BE A MEMBER IN GOOD STANDING. AT THE OUTSET OF THE ORGANIZATION'S EXISTENCE THERE IS THE OBVIOUS PROBLEM OF HOW A PERSON CAN PAY MONEY TO A TREASURER WHEN THERE CAN BE NO TREASURER UNTIL THERE ARE MEMBERS. AGAIN, THE PROVISIONS PERTAINING TO THE ELECTION OF OFFICERS REQUIRE THAT "THE OUTGOING EXECUTIVE COMMITTEE SHALL APPOINT A SCRUTINEER AND THREE ASSISTANTS". AGAIN, "UNION OFFICERS SHALL BE ELECTED

ANNUALLY AT THE FIRST GENERAL MEMBERSHIP MEETING IN MAY OF EACH YEAR". THE CONSTITUTION IN THE PRESENT CASE FURTHER PROVIDES THAT "NOMINATIONS FOR ELECTIONS MUST BE IN WRITING BY A MEMBER IN GOOD STANDING AND SECONDED BY A MEMBER IN GOOD STANDING AND FORWARDED TO THE SECRETARY AT LEAST TWO WEEKS PRIOR TO THE ELECTION MEETING". QUITE OBVIOUSLY THESE CONDITIONS COULD NOT BE CARRIED OUT WITH RESPECT TO THE ELECTION OF THE UNION'S FIRST OFFICERS IN VIEW OF THE PROVISIONS SET OUT ABOVE.

6. THE FACTS OF THIS CASE ARE CLEARLY DISTINGUISHABLE FROM THE FACTS OF THE CASES RELIED UPON BY INTERVENER #1. IN THIS CASE, THE ADOPTION OF THE CONSTITUTION AND THE ADMISSIONS TO MEMBERSHIP AND THE ELECTION OF OFFICERS ALL TOOK PLACE AT THE SAME MEETING AND THE MEMBERS PRESENT AT THE MEETING RATIFIED EVERYTHING THAT WAS DONE. WHILE THE TECHNICAL REQUIREMENTS OF THE CONSTITUTION MAY NOT HAVE BEEN STRICTLY ADHERED TO, THE MEMBERS PRESENT AT THE TIME THE ORGANIZATION WAS FORMED KNEW OF ALL THE REQUIREMENTS OF THE CONSTITUTION SINCE THEY HAD VOTED FOR ITS ADOPTION AND RATIFICATION AND RATIFIED EVERYTHING THAT WAS DONE AT THE MEETING. AS STATED ABOVE, THE EXECUTIVE COMMITTEE ADMINISTERS THE ORGANIZATION UNDER THE GUIDANCE OF THE GENERAL MEETING OF THE MEMBERSHIP. IT IS THEREFORE APPARENT THAT ANYTHING DONE BY THE GENERAL MEETING OF THE MEMBERSHIP ON APRIL 29, 1970 AT THE TIME THE ORGANIZATION WAS FORMED MUST BE ACCEPTED AS BEING PROPERLY DONE UNLESS IT VIOLATES THE SPIRIT AND INTENT OF THE CONSTITUTION WHICH WAS ADOPTED BY THE MEMBERS. IN OUR VIEW, THERE WAS NOTHING WHICH TOOK PLACE AT THE MEETING OF APRIL 29TH WHICH COULD BE SAID TO VIOLATE THE SPIRIT AND INTENT OF THE ORGANIZATION OR ITS OBJECTS AS CONTAINED IN THE CONSTITUTION ADOPTED AT THAT MEETING.

7. IN THE BLUE BELL CASE REFERRED TO ABOVE, WE FIND THAT WHILE AN INTERNATIONAL UNION ISSUED A CHARTER TO AN ORGANIZATION, NO MEETING OF MEMBERS WAS HELD AND NO OFFICERS WERE ELECTED NOR WERE ANY RESPONSIBLE OFFICERS APPOINTED PRIOR TO THE DATE THAT THE APPLICATION FOR CERTIFICATION WAS MADE. THE BOARD THEREFORE FOUND THAT THE CHARTERED LOCAL WAS NOT A VIABLE ENTITY AT THE TIME THE APPLICATION FOR CERTIFICATION WAS MADE AND REFUSED TO CERTIFY THE CHARTERED LOCAL. IN THE BORG FABRICS CASE, AN ELECTION OF OFFICERS WAS HELD SOME TIME PRIOR TO A MEETING AT WHICH THE CONSTITUTION WAS ADOPTED AND THE PERSONS WHO SUBSEQUENTLY JOINED THE ORGANIZATION DID NOT RATIFY THE EARLIER ELECTION. IN THAT CASE, THE BOARD AGAIN FOUND THAT SINCE THERE WERE NO OFFICERS ELECTED, THE ORGANIZATION WAS NOT A VIABLE ENTITY. IN THE TRIPLE F FORMING CASE, THE BOARD FOUND THAT THE PERSONS WHO HELD OFFICE WERE NOT ENTITLED TO HOLD OFFICE UNDER THE CONSTITUTION AND THEREFORE THEIR ELECTION TO OFFICE VIOLATED THE EXPRESS PROVISIONS OF THE CONSTITUTION.

8. In this case, the only provision which appears to deal with the jurisdiction of the union is to be found in the objects clause which provides that one of the objects of the association is to "promote and advance the economic and social well-being of all workers engaged in manufacturing and allied trades". Membership in the applicant was open to a worker employed or capable of being employed in those operations covered by the union's jurisdiction. It therefore follows that since the respondent is engaged in manufacturing, any employee of the respondent is eligible for membership in the applicant. The two temporary officers of the applicant were employees of the respondent eligible for membership in the applicant and were members of the applicant at the time their election was ratified by the membership. The fact that they are referred to as temporary officers is not, in our view, fatal to their election. Apparently, the members decided at the time of the first meeting to hold a subsequent membership meeting at which a greater number of members would be in attendance in order that a more democratic expression of the membership could be obtained in a subsequent election of officers. Their election was ratified by all persons in attendace at the meeting and they were accordingly authorized to act until such time as other officers were elected. The fact that a full executive committee was not elected is not, in our view, fatal to this application. When an organization has sixteen members and two elected officers it must be said that the organization is a viable entity.

9. The Board therefore finds that the applicant is a trade union within the meaning of section 1(1)(j) of The Labour Relations Act.

10. Having regard to the agreement of the parties, the Board further finds that all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, janitorial staff whose duties consist of security and/or office cleaning, and persons covered by the subsisting collective agreement between the respondent and Draftsmen's Association of Ontario, Local 164, American Federation of Technical Engineers, A.F.L.-C.I.O., C.L.C., constitute a unit of employees of the respondent appropriate for collective bargaining.

11. The Board is satisfied on the basis of all the evidence before it that not less than forty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on May 14, 1970. the terminal date fixed for this application and the date which the Board determines, under

SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

13. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND INTERVENER #1.

14. THE MATTER IS REFERRED TO THE REGISTRAR.

17686-70-R: COMMUNICATIONS WORKERS OF AMERICA, (AFL-CIO-CLC) (APPLICANT) v. TAS COMMUNICATIONS SERVICES A DIVISION OF INTERNATIONAL UTILITIES CORPORATION (RESPONDENT).

- AND -

17687-70-R: COMMUNICATIONS WORKERS OF AMERICA, (AFL-CIO-CLC) (APPLICANT) v. TAS COMMUNICATIONS SERVICES A DIVISION OF INTERNATIONAL UTILITIES CORPORATION (RESPONDENT).

- AND -

17688-70-R: COMMUNICATIONS WORKERS OF AMERICA, (AFL-CIO-CLC) (APPLICANT) v. TAS COMMUNICATIONS SERVICES A DIVISION OF INTERNATIONAL UTILITIES CORPORATION (RESPONDENT).

- AND -

17689-70-R: COMMUNICATIONS WORKERS OF AMERICA, (AFL-CIO-CLC) (APPLICANT) v. TAS COMMUNICATIONS SERVICES A DIVISION OF INTERNATIONAL UTILITIES CORPORATION (RESPONDENT).

- AND -

17690-70-R: COMMUNICATIONS WORKERS OF AMERICA, (AFL-CIO-CLC) (APPLICANT) v. TAS COMMUNICATIONS SERVICES A DIVISION OF INTERNATIONAL UTILITIES CORPORATION (RESPONDENT).

- AND -

17691-70-R: COMMUNICATIONS WORKERS OF AMERICA, (AFL-CIO-CLC) (APPLICANT) v. TAS COMMUNICATIONS SERVICES A DIVISION OF INTERNATIONAL UTILITIES CORPORATION (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: J. SACK, P. KLYM AND B. MATHER FOR THE APPLICANT; G. W. HATELY FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 11, 1970.

1. The Board directs that the above applications be and they are hereby consolidated.

2. At the hearing of this matter the Board was advised that the proper name of the respondent in each case is

"TAS COMMUNICATIONS SERVICES A DIVISION OF INTERNATIONAL UTILITIES CORPORATION".

Accordingly the style of cause in each application is amended by deleting therefrom the name of the respondent initially shown therein and substituting therefor the name:

"TAS COMMUNICATIONS SERVICES A DIVISION OF INTERNATIONAL UTILITIES CORPORATION".

3. The Board finds that the applicant is a trade union within the meaning of section 1(1)(j) of The Labour Relations Act.

4. The respondent submitted that this application should be dismissed because the constitution of the applicant provides in section 2(e) that in the event an application for membership is denied, the initiation fee shall be refunded to the applicant. The respondent's argument was that this provision offended against the Board's policy of refusing to recognize as acceptable payments made conditional upon a refund in the event of failure of the union concerned to be certified by the Board.

5. In our opinion, the provision for refund of the initiation fee set out in the constitution of the applicant has reference solely to the case where the applicant has been denied membership in the union for some reason and is in no way related to the success or failure of an application for certification. No weight, therefore, can be given to the objection of the respondent in this regard.

6. Mr. S. G. Grizzle, Examiner, is authorized to inquire into and report to the Board on the lists submitted by the respondent.

17806-70-R: United Steelworkers of America (Applicant) v. TRI-SURE PRODUCTS LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: Rory F. Egan, Vice-Chairman and Board Members H. F. Irwin and P. J. O'Keeffe.

APPEARANCES AT THE HEARING: Wm. Sasso, Chris Paliare and Jim Pudge for the applicant; J. Perry Borden, K. W. Scott, H. T. Nelson and L. R. Vitkin for the respondent; W. G. Phelps, B. W. Doliszny and Tony Balanowski for the objectors.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER P.J. O'KEEFFE: June 26, 1970.

1. This is an application for certification.

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3. Two statements of objection or petitions were filed in opposition to the application. One document, hereinafter called the first petition, is dated May 13, 1970. It bears the following handwritten heading:

> "As we are satisfied with the working conditions with reasonable changes in Tri-Sure Product Ltd., we the undersigned, do NOT want a union under any circumstances."

The document carries the signatures of twenty-five employees. The other petition, hereinafter called the second petition, has a typed heading which reads:

> "I do not want the United Steel Workers of America to represent me as bargaining Agent in my dealings with Tri-Sure Products Limited or American Flange & Manufacturing Company Limited. I cancel any support I may have given to that Union by membership, application, payment or any other way."

It bears the signatures of thirty employees including all but one of those found on the first petition. It should be observed that the heading on the second petition contains no statement reflecting satisfaction with the working conditions "with reasonable changes" as appears in the first.

4. Tony Balanowski gave evidence on behalf of the petitioners. He stated that he had signed the first petition when it was presented to him at his work station during working hours. The petition was presented to him by an employee who had been a Set-Up foreman "a few years back", but was employed at the time in quality control. Balanowski did not know how or by whom the first petition was originated. The extent of his knowledge concerning it is what is recounted above.

5. Balanowski stated that he did not think the first petition was correct and decided to see, in his words, if people really wanted to keep the union out. He stated that he saw his solicitor and instructed him to draw up the form of the petition. In the afternoon of Tuesday, May 20, 1970, he spoke to the plant manager to ask for permission to hold a meeting of employees. He was given leave to hold a meeting after hours on the premises provided it was conducted in an orderly fashion. He said he did not tell the plant manager the purpose of the meeting.

6. Balanowski met the employees as they were punching out that afternoon and asked them to come to a meeting upstairs in the plant. He stated that he told them after they were assembled that he wanted them to come to another meeting after work the following day in a church hall situated a short distance from the plant. A substantial number of the employees came to the church hall and signed the petition there.

7. In determining the weight to be given to petitions, the Board requires testimony from a witness based upon his personal knowledge and observation as to the circumstances concerning the origination of the petition and the manner in which each signature on the document was obtained. The requirement is made in order that the Board may be able to reasonably satisfy itself as to whether the petition reflects the voluntary wishes of the employees or has been inspired or sponsored by management. In the present case there is no evidence of the above nature with respect to the first petition so that the Board has no knowledge as to its origination. Balanowski's evidence, as noted above, is confined to the manner in which he alone came to sign the first petition.

8. In our opinion, the first and the second petitions are interrelated. Balanowski took up the second petition for the precise purpose of curing what, in his opinion, was a defect in the first petition. To accomplish this, he arranged the meetings of May 20th and May 21st. As the result of these meetings, some thirty employees signed the new petition on May 21st. Employees who had signed the first petition apparently set their signatures to the second petition, without anyone questioning the need for so doing.

9. In the above circumstances, we find that evidence with respect to the origination and circulation of the first petition is essential to a proper assessment of the weight, if any, which should reasonably be given to the second petition. As already indicated, this evidence is lacking and this is fatal to both petitions. (Weyerhauser Canada Limited case, OLRB Monthly Reports, February 1964, p. 602).

10. Accordingly and without passing upon the propriety of the manner in which the signatures to the second document were obtained, the Board finds that the petitions do not weaken the evidence of membership submitted by the applicant so as to require the confirmatory evidence of a representation vote.

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13. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER H. F. IRWIN: June 26, 1970.

1. I dissent.

2. This is an application for certification filed by the applicant union with the Board on May 12, 1970. No evidence of membership in support of the application was filed by the applicant at the time the application was made. The terminal date fixed for this application and the date which the Board determines, under section 77(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the Act is May 22, 1970.

3. Petition #1 - A handwritten statement of desire, dated May 13, 1970, in opposition to this application and signed by Wm. Swirski and 24 other persons purported to be employees of the respondent was mailed to the Board by registered mail postmarked May 13, 1970 and is deemed to be filed with the Board on that date. As no person appeared at the hearing before the Board on June 8th in support of this petition, it should have been dismissed forthwith.

4. Petition #2 - An undated typewritten statement of desire also in opposition to this application was filed with the Board on May 22, 1970. This document was signed by Tony Balanowski and 29 other persons purported to be employees of the respondent. Sixteen (16) of these persons had also signed applications for membership in the applicant.

5. The applicant by registered mail dated May 22, 1970 forwarded to the Board nineteen (19) combination applications for membership receipts in support of its application. In accordance with Board practice, this information is not disclosed to the other parties until the report on the "count" is given by the chairman of the panel at the hearing. As the list of employees filed by the respondent was reduced from 37 to 34 names for the purposes of the "count", the applicant had the minimum number of cards to give it over 55% membership as required for outright certification. It became necessary, therefore, for the Board to enquire into petition #2 to ascertain whether or not it weakened the evidence of membership so as to require confirmation by a representation vote.

6. The Board heard evidence as to the origination, preparation and circulation of petition #2 from Tony Balanowski who represented his fellow employees who had signed it. He stated, inter alia, that he sponsored petition #2 because the

FIRST PETITION WAS CIRCULATED INSIDE THE PLANT DURING WORKING HOURS AND HE DIDN'T THINK THAT WAS THE CORRECT WAY OF DOING IT. HE WAS NOT ASKED TO ENLARGE UPON THIS EXPLANATION. THE MAJORITY DECISION STATES THAT THE TWO PETITIONS ARE INTERRELATED AND AS NO EVIDENCE WAS FORTHCOMING IN RESPECT OF ORIGINATION, PREPARATION AND CIRCULATION OF PETITION #1, IN ACCORDANCE WITH BOARD PRACTICE AS SET OUT IN THE WEYERHAUSER CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1964, P.602, PETITION #2 MUST BE DISMISSED.

7. IN THE WEYERHAUSER CANADA LIMITED CASE, SUPRA, THE SECOND PETITIONS WERE CONCEIVED AND CARRIED OUT BY THOSE WHO SPONSORED THE FIRST PETITION. THIS IS NOT THE SITUATION IN THE INSTANT CASE. BALANOWSKI HAD NO REQUEST FROM ANYONE INTERESTED IN THE FIRST PETITION TO TAKE UP THE SECOND PETITION WHICH WAS CONCEIVED, PLANNED AND EXECUTED BY HIMSELF. HE HAD NO KNOWLEGE OF THE ORIGINATION AND CIRCULATION OF THE FIRST PETITION OTHER THAN SIGNING IT WHEN IT WAS PRESENTED TO HIM.

8. WITH RESPECT, I CONSIDER IT IS NOT THE RESPONSIBILITY OF BALANOWSKI TO VALIDATE THE FIRST PETITION. UNDER THE DIRECTION CONTAINED IN THE BOARD'S RULES OF PROCEDURE, REGULATIONS AND PRACTICE NOTICES, FORM 5, NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND OF HEARING, THE EMPLOYEES ARE INFORMED THAT -

> "8. ANY EMPLOYEE, OR GROUP OF EMPLOYEES, WHO HAS INFORMED THE BOARD IN WRITING OF HIS OR THEIR DESIRE IN ACCORDANCE WITH PARAGRAPHS 5 AND 6 MAY ATTEND AND BE HEARD AT THE HEARING IN PERSON OR BY A REPRESENTATIVE. ANY EMPLOYEE OR REPRESENTATIVE WHO APPEARS AT THE HEARING WILL BE REQUIRED TO TESTIFY, OR PRODUCE A WITNESS OR WITNESSES WHO WILL BE ABLE TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION, AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED, AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED." (EMPHASIS ADDED)

BALANOWSKI NEITHER FILED THE FIRST PETITION NOR PARTICIPATED IN ITS ORIGINATION OR CIRCULATION. TO REQUIRE HIM TO TESTIFY AS TO ITS ORIGINATION AND CIRCULATION IS GOING BEYOND THE SCOPE OF THE DIRECTION OF THE BOARD AS SET OUT ABOVE AND PLACES HIM IN AN UNFAIR AND UNWARRANTED POSITION. THIS IS THE BOARD'S ENQUIRY AND THE ONUS IS ON IT TO MAKE ANY ENQUIRY IT DEEMS NECESSARY INTO THE ORIGINATION AND CIRCULATION OF THE FIRST PETITION TO SATISFY ITSELF THAT BALANOWSKI AND THOSE WHO SIGNED HIS PETITION

WERE NOT WRONGFULLY INFLUENCED BY THE FIRST PETITION FILED BY WM. SWIRSKI. MOREOVER, BALANOWSKI WAS NOT SERVED BY THE BOARD WITH A COPY OF THE FIRST PETITION AS WERE THE OTHER PARTIES TO THE PROCEEDING.

9. FOR THESE REASONS, I WOULD HAVE DIRECTED THAT THIS CASE BE RELISTED FOR HEARING TO ENQUIRE INTO THE FIRST PETITION TO ASCERTAIN WHAT EFFECT, IF ANY, IT HAD ON THE ORIGINATION, PREPARATION AND CIRCULATION OF THE SECOND PETITION. THE BOARD WOULD SUMMON THE NECESSARY WITNESSES TO APPEAR AND GIVE TESTIMONY AS MAY BE REQUIRED OF THEM.

17821-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1747, AFFILIATED WITH THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (APPLICANT) v. DOWNSVIEW LATHING COMPANY LTD. (RESPONDENT) v. WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 562 (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, F. LEGER AND N. LEBLANC FOR THE APPLICANT; R. D. PERKINS AND D. TULLIO FOR THE RESPONDENT; R. KOSKIE AND G. SIMONE FOR THE INTERVENER AND GROUP OF EMPLOYEES.

DECISION OF THE BOARD: JUNE 10, 1970.

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2. AT THE COMMENCEMENT OF THE HEARING OF THIS APPLICATION FOR CERTIFICATION ON JUNE 5, 1970, COUNSEL FOR THE INTERVENER AND GROUP OF EMPLOYEES CHALLENGED THE PROPRIETY OF BOARD MEMBER EDMUND BOYER SITTING ON THE DIVISION OF THE BOARD ASSIGNED TO ENTERTAIN AND MAKE A DETERMINATION ON THIS APPLICATION FOR CERTIFICATION. THE BASIS OF COUNSEL'S CHALLENGE WAS THAT AT ONE TIME BOARD MEMBER EDMUND BOYER HAD BEEN AN OFFICER AND ACTIVE IN THE AFFAIRS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND STILL RETAINS HIS MEMBERSHIP IN THE UNION AND THAT THEREFORE BOARD MEMBER EDMUND BOYER WAS INVOLVED IN A CONFLICT OF INTEREST. COUNSEL FOR THE APPLICANT AND RESPONDENT INFORMED THE BOARD THAT THEY WERE NOT MAKING ANY REPRESENTATIONS ON THE CHALLENGE BY COUNSEL FOR THE INTERVENER AND GROUP OF EMPLOYEES.

3. COUNSEL FOR THE INTERVENER AND GROUP OF EMPLOYEES PREVIOUSLY CHALLENGED THE PROPRIETY OF BOARD MEMBER EDMUND BOYER SITTING ON THE DIVISION OF THE BOARD ASSIGNED TO ENTERTAIN AND MAKE A DETERMINATION ON A PROCEEDINGS INVOLVING A LOCAL OF THE

United Brotherhood of Carpenters and Joiners of America, see the Fraser-Brace Engineering Company, Limited case, OLRB. M.R. January 1969, p. 1087, at p. 1090.

4. Although Board Member Edmund Boyer is a member of Local Union 1940 of the United Brotherhood of Carpenters and Joiners of America, he has been exempted from attendance at meetings of Local Union 1940, does not participate in any of its activities and does not pay assessments, as distinct from dues, to Local Union 1940. This state of affairs prevailed at the time of the decision of the Board in the Fraser-Brace Engineering Company, Limited case, (supra) and still prevails at this time. In addition, since in the decision of the Board in the Fraser-Brace Engineering Company, Limited case, (supra), Board Member Edmund Boyer has submitted a written application to the United Brotherhood of Carpenters and Joiners of America for an honorary withdrawal. On assuming his duties as a member of the Board, Mr. Boyer swore an oath that he would faithfully, truly and impartially to the best of his judgment, skill and ability, execute and perform the office of a Board Member. Mr. Boyer again expressed his confidence that he could discharge his obligations with respect to this application for certification in accordance with his oath of office. Board Member Edmund Boyer therefore does not deem it necessary to disqualify himself from the division of the Board assigned to hear the application. The parties were so advised of the position of Board member Edmund Boyer by the Chairman of the division of the Board assigned to the case.

5. Having regard to the representations of the parties, Mr. A. A. Morrow, Examiner, is authorized to inquire into and report back to the Board on

(a) the list of employees filed by the respondent;

(b) composition of the bargaining unit suggested by the applicant; and

(c) composition of the bargaining unit suggested by the respondent.

17834-70-R: Local 804 International Brotherhood of Electrical Workers ITT Canada Limited (Respondent) v. Group of Employees (Objectors).

BEFORE: J. D. O'Shea, Q.C., Vice-Chairman, and Board Members O. Hodges and H. F. Irwin.

APPEARANCES AT THE HEARING: DAVID BUTT AND FRANK VOSSEN FOR THE APPLICANT, B. H. STEWART, G. DALGARD AND J. LUDTKE FOR THE RESPONDENT, NO ONE FOR THE OBJECTORS.

DECISION OF THE BOARD: JUNE 16, 1970.

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2. THIS IS AN APPLICATION FOR CERTIFICATION.

3. ON DECEMBER 31, 1969, THE RESPONDENT PURCHASED, WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT, THE BUSINESS FORMERLY CARRIED ON AT GUELPH BY GENERAL CONTROLS CO. (CANADA) LTD.. UNITED STEELWORKERS OF AMERICA AND ITS LOCAL UNION NO. 6340 WAS A PARTY TO A COLLECTIVE AGREEMENT WITH GENERAL CONTROLS CO. (CANADIAN) LTD. FOR ALL OF ITS EMPLOYEES AT GUELPH WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. PURSUANT TO THEPROVISIONS OF SECTION 47A, UNITED STEELWORKERS OF AMERICA AND ITS LOCAL UNION NO. 6340 SERVED A NOTICE TO BARGAIN UPON THE RESPONDENT. THE BOARD IN ITS DECISION DATED JUNE 16, 1970, IN A REFERENCE FROM THE MINISTER OF LABOUR BETWEEN ITT CANADA LIMITED AND UNITED STEELWORKERS OF AMERICA AND ITS LOCAL UNION NO. 6340 (BOARD FILE NO. 17870-70-M), DETERMINED THAT ALL EMPLOYEES OF ITT CANADA LIMITED AT GUELPH, WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING. THE BARGAINING UNIT WITH RESPECT TO WHICH THE STEELWORKERS SERVED A NOTICE TO BARGAIN PURSUANT TO THE PROVISIONS OF SECTION 47A THEREFORE INCLUDED THE EMPLOYEES FOR WHOM THE APPLICANT IN THIS MATTER SEEKS TO BE CERTIFIED AS BARGAINING AGENT.

4. SECTION 47A(9) OF THE ACT READS AS FOLLOWS:

> FOR THE PURPOSES OF SECTION 5, 43, 45,46 AND 96, A NOTICE GIVEN BY A TRADE UNION UNDER SUBSECTION 2 OR A DECLARATION MADE BY THE BOARD UNDER SUBSECTION 5 HAS THE SAME EFFECT AS A CERTIFICATION UNDER SECTION 7.

5. SINCE THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL UNION NO. 6340 SERVED A NOTICE TO BARGAIN ON THE RESPONDENT UNDER SUBSECTION (2) OF SECTION 47A WITH RESPECT TO THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED, SUCH NOTICE TO BARGAIN HAS THE SAME EFFECT AS A CERTIFICATE UNDER SECTION 7 OF THE ACT, PURSUANT TO THE PROVISIONS OF SECTION 47A (9) QUOTED ABOVE. SINCE THE NOTICE TO BARGAIN SERVED BY UNITED STEELWORKERS OF AMERICA AND ITS LOCAL UNION NO. 6340 HAS THE EFFECT DESCRIBED ABOVE AND SINCE LESS THAN A YEAR HAS ELAPSED SINCE THE SERVICE OF SUCH NOTICE TO BARGAIN, THIS APPLICATION FOR CERTIFICATION IS UNTIMELY PURSUANT TO THE PROVISIONS OF SECTION 5 OF THE ACT.

6. THIS APPLICATION IS ACCORDINGLY DISMISSED.

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING JUNE

17815-70-R: LEO GEORGE COMO (APPLICANT) v. HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION A.F.L.-C.I.O.-C.L.C. LOCAL 197 (RESPONDENT) v. NICK MASNEY HOTELS LIMITED (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: DENIS F. O'LEARY AND LEO GEORGE COMO FOR THE APPLICANT; STANLEY SIMPSON AND W. A. ADAMS FOR THE RESPONDENT; NO ONE APPEARING FOR THE INTERVENER.

DECISION OF THE BOARD: JUNE 9, 1970.

1. THIS IS AN APPLICATION UNDER SECTION 43 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

2. THE RESPONDENT TOOK THE POSITION THAT THE APPLICATION IS UNTIMELY BECAUSE PRIOR TO THE APPLICATION THE MINISTER HAD APPOINTED A CONCILIATION OFFICER TO ENDEAVOUR TO EFFECT A COLLECTIVE AGREEMENT BETWEEN THE PARTIES AND THE PERIODS SET OUT IN SECTION 46(1)(A), (B) OR (C) HAS NOT ELAPSED PRIOR TO THE DATE OF THE APPLICATION. THE SECTION PROVIDES AS FOLLOWS:

> 46(1) SUBJECT TO SUBSECTION 3, WHERE A TRADE UNION HAS NOT MADE A COLLECTIVE AGREEMENT WITHIN ONE YEAR AFTER ITS CERTIFICATION AND THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR UNDER THIS ACT, NO APPLICATION FOR CERTIFICATION OF A BARGAINING AGENT OF, OR FOR A DECLARATION THAT A TRADE UNION NO LONGER REPRESENTS, THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE SHALL BE MADE UNTIL,
>
> (A) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES THE REPORT OF A CONCILIATION BOARD OR MEDIATOR; OR
>
> (B) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD; OR

(c) SIX MONTHS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE OF A REPORT OF THE CONCILIATION OFFICER THAT THE DIFFERENCES BETWEEN THE PARTIES CONCERNING THE TERMS OF A COLLECTIVE AGREEMENTS HAVE BEEN SETTLED,

AS THE CASE MAY BE.

3. IN SUPPORT OF ITS CONTENTION THE RESPONDENT FILED A LETTER DATED JANUARY 14TH, 1969 ON THE LETTERHEAD OF THE OFFICE OF THE DEPUTY MINISTER OF LABOUR ACKNOWLEDGING RECEIPT OF THE RESPONDENT UNION'S REQUEST FOR THE APPOINTMENT OF A CONCILIATION OFFICER. THE LETTER WENT ON TO STATE THAT AFTER AN INTERVAL OF FIVE DAYS THE APPLICATION WOULD BE PROCESSED IN THE ABSENCE OF OBJECTIONS.

4. THE RESPONDENT ALSO RELIED UPON A FORM LETTER RECEIVED BY ITS BUSINESS AGENT DATED JANUARY 20TH, 1969. IT IS ALSO ON THE LETTERHEAD OF THE OFFICE OF THE DEPUTY MINISTER OF LABOUR AND BEARS WHAT PURPORTS TO BE THE SIGNATURE OF THE DEPUTY MINISTER AT THE FOOT THEREOF. THAT LETTER READS AS FOLLOWS:

"RE: THE LABOUR RELATIONS ACT; AND NICK MASNEY HOTELS LIMITED; AND HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, A.F.L., C.I.O., C.L.C., LOCAL 197. (COLLINS HOTEL IN DUNDAS).

CONCILIATION OFFICER: MR. J. DUNKLEE.

DEAR SIR:

I WISH TO ADVISE YOU THAT THE MINISTER OF LABOUR HAS APPOINTED THE ABOVE-NAMED AS CONCILIATION OFFICER TO CONFER WITH THE PARTIES AND TO ENDEAVOUR TO EFFECT A COLLECTIVE AGREEMENT BETWEEN THEM.

YOU NO DOUBT WILL BE HEARING FROM THE CONCILIATION OFFICER IN THIS REGARD IN THE NEAR FUTURE.

YOURS VERY TRULY,
"T. M. EBERLEE"
T. M. EBERLEE
DEPUTY MINISTER"

5. It was the testimony of William Adams, Business Agent of the respondent, that following receipt of the letter of January 20th, 1969 he discussed the matter with Mr. Dunklee. He also testified that he received from Mr. Dunklee a letter dated May 13th, 1970 in the following terms:

> "Re: The Labour Relations Act; and Nick Masney Hotels Limited; and Hotel and Restaurant Employees' and Bartenders' International Union, A.F.L.-C.I.O.-C.L.C., Local 197. (Colins Hotel in Dundas).
>
> ---
>
> In connection with my appointment as Conciliation Officer in the above matter, this is to advise that I will convene a meeting of the parties on Tuesday, May 26, 1970, at 9:30 a.m., in the Sheraton Connaught Hotel, Hamilton, Ontario.
>
> Yours very truly,
> "J. Dunklee"
> J. Dunklee
> Conciliation Officer."

6. It is our opinion that this latter testimony confirms the appointment set out in the letter of January 20th, 1969.

7. The intervener established that upon receipt by it of the letter of January 14th, 1969 it objected to the appointment of a conciliation officer because an application to quash the certificate of The Labour Relations Board had been launched. The intervener also adduced evidence with a view to establishing that it had not received the letter of January 20th, 1969.

8. The Board is satisfied on the totality of the evidence that notice to bargain under section 11 of the Act was given and that under the provisions of secion 13 of the Act, the Minister appointed a conciliation officer prior to the date of the present application. That being so and since none of the required events set out in section 46 have occurred, the Board, in view of the provisions of that section, cannot entertain the present application. These proceedings are accordingly terminated.

17852-70-R: ARMCO CANADA LTD. (FORMERLY KNOWN AS ARMCO DRAINAGE & METAL PRODUCTS OF CANADA LTD.) (Applicant) v. Labourers' International Union of North America, Local 183 (Respondent).

BEFORE: Rory F. Egan, Vice-Chairman and Board Members O. Hodges and J. E. C. Robinson, Q.C.

APPEARANCES AT THE HEARING: T. A. Sweeney and George Turvey for the applicant; A. M. Minsky for the respondent.

DECISION OF THE BOARD: June 30, 1970.

. . .

2. This is an application under section 45 of The Labour Relations Act for a declaration that the respondent no longer represents the employees in the bargaining unit for which it is the bargaining agent.

3. The respondent was certified as bargaining agent for all construction labourers in the employ of the applicant company within an area set out in the certificate. The certificate is dated September 15, 1965.

4. The applicant testified that following the certification the respondent notified the applicant of its desire to meet in order to commence collective bargaining. A meeting was held on September 23, 1965 which was described by the witness for the applicant as exploratory. However that may be, the meeting was adjourned and according to the evidence a further meeting was to take place on October 12, 1965. At this proposed meeting the respondent was to produce a province wide agreement for study by the parties. This meeting did not take place. The evidence of the respondent is that the meeting was postponed for the reasons set out in a letter dated October 15, 1965 addressed to Mr. M. J. Reilly, president to the respondent in the following terms:

> "I was glad that you received my telephone message about our meeting last Tuesday, and that you were not inconvenienced in going to our office and not finding us there.
>
> The major reason for postponement is that to date, we have not yet received the information promised regarding a Provincial agreement, along with the pertinent area labour rates.
>
> Until such time as we have this information, we will not be in a position to make any conclusions at all regarding any form of agreement."

5. There were no further meetings or communications between

THE APPLICANT AND THE RESPONDENT FROM THAT TIME FORWARD.

6. THE RESPONDENT OFFERED NO EVIDENCE.

7. HAVING REGARD TO THE CIRCUMSTANCES ESTABLISHED BY THE UNCONTRADICTED EVIDENCE OF THE APPLICANT, THE BOARD IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 45 OF THE ACT FINDS THAT THE APPLICANT IS ENTITLED TO THE RELIEF WHICH IT IS SEEKING WITHOUT THE TAKING OF A REPRESENTATION VOTE.

8. THE BOARD ACCORDINGLY DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF THE APPLICANT FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT.

17916-70-R: CHARTERS PUBLISHING COMPANY, LIMITED (APPLICANT) v. WAREHOUSEMEN AND MISCELLANEOUS DRIVERS' UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C..

APPEARANCES AT THE HEARING: H. A. BERESFORD, S. R. CHARTERS AND GEORGE METCALFE FOR THE APPLICANT, JACK HURD FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: JUNE 30, 1970.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT MADE BY THE APPLICANT PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE LABOUR RELATIONS ACT.

2. THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE APPLICANT ON NOVEMBER 25, 1969. BY LETTER DATED MAY 21, 1970, THE RESPONDENT GAVE NOTICE TO BARGAIN TO THE APPLICANT WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT PURSUANT TO THE PROVISIONS OF SECTION 11 OF THE ACT. AT THE TIME NOTICE WAS GIVEN, THE RESPONDENT UNION ALSO FORWARDED TWO COPIES OF A PROPOSED COLLECTIVE AGREEMENT WHICH WAS TO FORM THE BASIS OF NEGOTIATIONS. THE APPLICANT AGREED TO MEET AND BARGAIN ON JUNE 4, 1970, HOWEVER, ON JUNE 3, 1970, THE APPLICANT CANCELLED THE NEGOTIATION MEETING AND ON JUNE 4, 1970, THIS APPLICATION FOR A DECLARATION TERMINATING THE RESPONDENT'S BARGAINING RIGHTS WAS MADE.

3. THE APPLICANT TOOK THE POSITION THAT SINCE THE RESPONDENT HAD PERMITTED MORE THAN SIXTY DAYS TO ELAPSE DURING WHICH IT DID NOT SEEK TO BARGAIN AND INDEED HAD PERMITTED 176 DAYS TO ELAPSE BEFORE SERVING A NOTICE TO BARGAIN, SUCH LACK OF DILIGENCE ON THE PART OF THE RESPONDENT PLACED IN DOUBT THE SUPPORT OF THE EMPLOYEES IN THE BARGAINING UNIT ENJOYED BY THE RESPONDENT.

4. THE RELIEF AFFORDED BY SECTION 45 OF THE ACT IS INTENDED TO PROVIDE A REMEDY WHERE A UNION SLEEPS ON ITS BARGAINING RIGHTS. HOWEVER, SECTION 45 OF THE ACT IS TO BE USED AS A SHIELD RATHER THAN AS A SWORD. IF THIS APPLICATION HAD BEEN MADE AFTER SIXTY DAYS HAD ELAPSED DURING WHICH THE UNION HAD NOT SOUGHT TO BARGAIN AND BEFORE NOTICE TO BARGAIN WAS SERVED BY THE UNION, DIFFERENT CONSIDERATIONS WOULD APPLY. THE FACTS OF THIS CASE, HOWEVER, ESTABLISH THAT IT WAS ONLY AFTER THE UNION SOUGHT TO BARGAIN AND AFTER THE BARGAINING MEETING HAD BEEN AGREED TO THAT THE APPLICANT LAUNCHED THIS APPLICATION. WHILE NO EXPLANATION WAS OFFERED AS TO THE REASON FOR THE DELAY IN SERVING NOTICE TO BARGAIN UNDER SECTION 11, IT IS NOTED THAT NO EMPLOYEE IN THE BARGAINING UNIT SOUGHT TO BE RELIEVED OF ANY HARDSHIP CAUSED BY THE DELAY BY BRINGING AN APPLICATION TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT.

5. SINCE THE RESPONDENT UNION HAS SERVED NOTICE TO BARGAIN AND HAS IN FACT PROPOSED THE TERMS OF A COLLECTIVE AGREEMENT TO BE ENTERED INTO, THE BOARD FINDS THAT THIS APPLICATION IS UNTIMELY.

6. THIS APPLICATION IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER J. E. C. ROBINSON, Q.C.: JUNE 30, 1970.

I DISSENT FROM THE DECISION OF THE MAJORITY DISMISSING THE APPLICATION FOR TERMINATION UNDER THE PROVISIONS OF SECTION 45 OF THE LABOUR RELATIONS ACT.

THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN OF THE EMPLOYEES OF THE APPLICANT ON NOVEMBER 25TH, 1969.

APPROXIMATELY 176 DAYS LATER, THE UNION SERVED NOTICE TO BARGAIN UPON THE EMPLOYER.

THE PORTIONOOF SECTION 45(1) WHICH IS RELEVANT TO THE FACTS OF THIS CASE PROVIDES AS FOLLOWS:-

> IF A TRADE UNION FAILS TO GIVE THE EMPLOYER NOTICE UNDER SECTION 11 WITHIN SIXTY DAYS FOLLOWING CERTIFICATION . . ., THE BOARD MAY, UPON THE APPLICATION OF THE EMPLOYER . . ., AND WITH OR WITHOUT A REPRESENTATION VOTE, DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.

IT HAS OFTEN BEEN SAID THAT IN EXERCISING ITS DISCRETION UNDER SECTION 45, THE BOARD MUST DETERMINE WHETHER THE TRADE UNION HAS SUFFICIENTLY CARRIED OUT ITS OBLIGATIONS AS BARGAINING AGENT FOR THE EMPLOYEES CONCERNED TO PROPERLY REPRESENT THEIR INTERESTS.

THE CASES DEALING WITH APPLICATIONS FOR TERMINATION OF BARGAINING RIGHTS ARE LEGION. IN MY RESPECTFUL OPINION, HOWEVER, THE PRINCIPLES ON WHICH THE BOARD WILL EXERCISE ITS DISCRETION MAY BE MANIFESTED IN THE EXCERPTS FROM THE FOLLOWING CASES.

IN THE MOYER SAND CASE, O.L.R.B. MONTHLY REPORT, MARCH 1966, P. 913, THE BOARD STATED:-

> THE MAKING OF A DECLARATION TERMINATING BARGAINING RIGHTS, HOWEVER, LIES IN THE DISCRETION OF THE BOARD AND BEFORE THE BOARD WILL EXERCISE ITS DISCRETION IN FAVOUR OF MAKING A DECLARATION IT MUST BE SATISFIED THAT THE TRADE UNION CONCERNED HAS FAILED TO TAKE STEPS WITHIN A REASONABLE TIME TO FORWARD THE INTERESTS OF THE EMPLOYEE IT REPRESENTS (SEE WALMER TRANSPORT COMPANY CASE, (1953) CCH CANADIAN LABOUR LAW REPORTS. TRANSFER BINDER 1949-1954, ¶17,062; C.L.S. 76-404; OLIVER LUMBER COMPANY CASE, O.L.R.B. MONTHLY REPORT, APRIL 1963, PAGE 280; STARK TRUCK SERVICE (LONDON) LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1964, PAGE 150). THE BOARD, THEREFORE, AFFORDS TO THE TRADE UNION OR ANY OTHER INTERESTED PARTY AN OPPORTUNITY TO GIVE AN EXPLANATION FOR THE DELAY IN COMMENCING OR CONTINUING NEGOTIATIONS. WHERE THE EXPLANATION IS SATISFACTORY THE BOARD IN THE EXERCISE OF ITS DISCRETION WILL DECLINE TO ISSUE A DECLARATION. IF, HOWEVER, AS A RESULT OF THE CONDUCT OF THE TRADE UNION A REASONABLE DOUBT EXISTS AS TO THE WISHES OF THE EMPLOYEES, THE BOARD WILL TEST THEIR DESIRES BY DIRECTING THE TAKING OF A REPRESENTATION VOTE.

IN THE WALMER TRANSPORT CO. LIMITED CASE (1953) 2 C.L.S. 76-404, THE BOARD STATED:-

> THE PURPOSE OF THE SECTION IS TO ENSURE THAT A UNION WHICH HAS ACQUIRED BARGAINING RIGHTS ON BEHALF OF EMPLOYEES WILL ACTIVELY PURSUE AND FORWARD THEIR INTERESTS IN BARGAINING WITH THEIR EMPLOYER. IF THE UNION FAILS IN THIS RESPECT, THE EMPLOYEES MAY SEEK TO RID THEMSELVES OF THAT UNION SO THAT THEY MAY BE FREE TO SELECT ANOTHER BARGAINING AGENT OR TO ENGAGE IN INDIVIDUAL BARGAINING WITH THE EMPLOYER WHICH MIGHT OTHERWISE BE RENDERED DIFFICULT OR EVEN IMPOSSIBLE BY SECTION 53 (NOW SECTION 59) OF THE ACT. IN THE CIRCUMSTANCES SET FORTH IN THE SECTION, THE EMPLOYER MAY ALSO SEEK A DECLARATION TERMINATING BARGAINING RIGHTS OF THE UNION. HIS PURPOSE IN MAKING SUCH A DECLARATION MAY BE THAT HE WISHES TO ALTER RATES OF WAGES OR OTHER WORKING CONDITIONS WHICH HE IS INHIBITED FROM DOING BECAUSE OF THE PROVISIONS OF SECTION 53 (NOW SECTION 59); OR HE MAY WISH TO AVOID THE RISK OF PROSECUTION SHOULD HE REFUSE TO BARGAIN WITH A TRADE UNION THAT HAS "SLEPT ON ITS RIGHTS" FOR A LONG PERIOD OF TIME, WHERE HE IS CONVINCED THAT THE UNION NO LONGER REPRESENTS HIS EMPLOYEES; OR HE MAY WISH TO ACCORD RECOGNITION TO ANOTHER UNION WHICH HAS SATISFIED HIM THAT IT DOES NOW REPRESENT HIS EMPLOYEES, A COURSE WHICH HE IS PROHIBITED FROM ADOPTING SO LONG AS THE BARGAINING RIGHTS OF THE OTHER UNION SUBSIST.

INDEED, IN THE INSTANT CASE, THE EMPLOYER CALLED EVIDENCE TO INDICATE THAT NOT ONLY HAD IT BEEN PREJUDICED BY THE LACK OF DILIGENCE BY THE UNION IN GIVING NOTICE, BUT SO TOO HAD ITS EMPLOYEES. SURELY, THE LEGISLATURE ENACTED THE PROVISIONS OF SECTION 45 TO PREVENT THIS VERY PREJUDICE.

IN THE SOLE CASE (1949) D.L.S. 7-2105, THE BOARD STATED:-

> A (TERMINATION) PROCEEDING IS A TYPE OF REPRESENTATIVE PROCEEDING, THAT IS, IT HAS AS ITS OBJECTIVE THE DETERMINATION OF THE QUESTION OF REPRESENTATION. AN APPLICATION FOR A (DECLARATION TERMINATING BARGAINING RIGHTS) IS, IN EFFECT, A REQUEST THAT THE BOARD EXAMINE INTO AND DETERMINE THE QUESTION WHETHER THE EMPLOYEES AFFECTED BY THE APPLICATION DESIRE TO CONTINUE TO BE REPRESENTED BY THEIR. . .BARGAINING AGENT. THE BASIS UPON WHICH (A DECLARATION TERMINATING BARGAINING RIGHTS) MAY BE GRANTED IS THAT "A BARGAINING AGENT NO LONGER REPRESENTS. . .THE EMPLOYEES IN (THE BARGAINING UNIT)."

IF THE FOREGOING IS A CORRECT STATEMENT OF THE BOARD'S JURISPRUDENCE, AND IF THE HEARING IN THE INSTANT CASE PURPORTED TO BE AN EXAMINATION BY THE BOARD TO DETERMINE THE QUESTION OF WHETHER THE EMPLOYEES AFFECTED BY THIS APPLICATION DESIRE TO CONTINUE TO BE REPRESENTED BY THE RESPONDENT, I AM AT A COMPLETE LOSS TO SATISFACTORILY DETERMINE THAT QUESTION ON THE EVIDENCE PROFFERED BY THE UNION. THE UNION CALLED ABSOLUTELY NO EVIDENCE IN THIS CASE WHATSOEVER. AFTER THE LAPSE OF 176 DAYS OF SLUMBER BY THE UNION, I AM UNABLE TO DETERMINE IF EVEN THE SAME EMPLOYEES ARE CONCERNED AS WERE WHEN THE RESPONDENT WAS CERTIFIED.

IN DOMINION STORES LIMITED CASE, CCH CANADIAN LABOUR LAW REPORTER 1955-59 TRANSFER BINDER 16,047, THE BOARD STATED, IN CONSIDERING WHETHER BARGAINING RIGHTS SHOULD BE TERMINATED BY A UNION WHICH SLEPT ON SUCH RIGHTS:-

> IF NO SATISFACTORY EXPLANATION IS FORTHCOMING, THE BOARD WILL NO DOUBT IN MANY CASES TERMINATE THE BARGAINING RIGHTS OF THE UNION INSTANTANEOUSLY. IF A REASONABLE DOUBT ARISES AS TO THE DESIRES OF THE EMPLOYEES AT THAT STAGE, THE BOARD MAY TEST THOSE DESIRES BY DIRECTING A REPRESENTATION VOTE. HOWEVER, WHERE THE TARDINESS OF THE UNION IS EXCUSABLE AND ESPECIALLY WHERE IT STILL COMMANDS THE ALLEGIANCE OF A MAJORITY OF THE EMPLOYEES, THE APPLICATION SHOULD BE DISMISSED.

IN THE PRESENT CASE, I CANNOT RECONCILE MYSELF TO SAY THE TARDINESS OF THE UNION WAS EXCUSABLE, FOR IT GAVE NO EXCUSE. NEITHER CAN I SAY THAT IT STILL COMMANDS THE ALLEGIANCE OF A MAJORITY OF THE EMPLOYEES, FOR IT CALLED NO EVIDENCE TO DEMONSTRATE SUCH ALLEGIANCE.

I AM, HOWEVER, AWARE THAT THIS APPLICATION WAS COMMENCED AFTER THE UNION GAVE NOTICE TO BARGAIN, ALBEIT SUCH NOTICE WAS GIVEN 176 DAYS AFTER THE CERTIFICATION OF THE UNION. IN THESE CIRCUMSTANCES, THEREFORE, IT WOULD BE MY FINDING THAT THERE IS A REASONABLE DOUBT AS TO THE DESIRES OF THE EMPLOYEES, AND ACCORDINGLY, I WOULD HAVE DIRECTED THAT THE BOARD SHOULD TEST THOSE DESIRES BY DIRECTING A REPRESENTATION VOTE.

IT HAS BEEN SUGGESTED THAT "SECTION 45 OF THE ACT IS TO BE USED AS A SHIELD RATHER THAN AS A SWORD". SURELY THIS IS NOT AN EXPRESSION THAT WAS INTENDED TO SHIELD A UNION FROM ITS TARDINESS AND LACK OF DILIGENCE.

IN MY OPINION, THEREFORE, THE DESIRES OF THE EMPLOYEE IN THIS BARGAINING UNIT AT THIS TIME CAN ONLY BE ASCERTAINED BY

THE DIRECTING OF A REPRESENTATION VOTE AND I WOULD SO FIND.

INDEXED ENDORSEMENTS - PROSECUTION

17432-69-U: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS AND LOCAL LODGE 1246 (APPLICANTS) v. FRANKLIN MANUFACTURING COMPANY (CANADA) LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F.W. MURRAY.

APPEARANCES AT THE HEARING: J. SACK, HARRY GRAHAM, S. STEWARDSON AND L. WILCOX FOR THE APPLICANT; B.H. STEWART, C. COLIN, L. HAZEL AND L. PERRON FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 5, 1970.

1. THIS IS AN APPLICATION FOR CONSENT TO PROSECUTE THE RESPONDENT FOR AN ALLEGED VIOLATION OF SECTION 59(1) OF THE LABOUR RELATIONS ACT. THE RESPONDENT SUBMITS THAT SINCE THIS ISSUE IS PROCEEDING TO ARBITRATION PURSUANT TO SECTION 59(2) OF THE LABOUR RELATIONS ACT THAT THE BOARD SHOULD EXERCISE ITS DISCRETION AND REFUSE TO ISSUE ITS CONSENT TO THE INSTITUTION OF A PROSECUTION.

2. THE LABOUR ACT CREATES STATUTORY OFFENCES WHICH ARE PENAL OR QUASI CRIMINAL IN NATURE. AS SUCH THEY ARE OFFENCES AGAINST THE PUBLIC WHICH RENDERS THE PERSON GUILTY OF THE ACT LIABLE TO PUNISHMENT IN THE FORM OF A FINE. WHILE THESE PENAL OR QUASI CRIMINAL OFFENCES OFTEN INJURE PRIVATE PERSONS WHO HAVE OTHER REMEDIES, AND IN THIS CASE A REMEDY BY WAY OF ARBITRATION, THE OFFENCE IS AN ACT CONTRARY TO THE ORDER, PEACE AND WELL BEING OF SOCIETY AND PUNISHABLE BY THE STATE. THE ARBITRATION PROCEEDING HAS FOR ITS OBJECT THE RECOVERY OF MONEY, OR THE ENFORCEMENT OF A RIGHT FOR THE ADVANTAGE OF THE PERSON SUING WHILE THE PENAL OR QUASI CRIMINAL PROCEEDING HAS FOR ITS OBJECT THE PUNISHMENT OF THE PUBLIC OFFENCE.

3. APPLYING THAT CONSIDERATION WE ARE OF THE OPINION THAT THE REMEDY BY WAY OF PROSECUTION HAS A DIFFERENT PURPOSE FROM THE ARBITRATION PROCEEDING AND THAT WE SHOULD NOT REFUSE CONSENT ON THE SOLE BASIS THAT THIS MATTER IS PROCEEDING TO ARBITRATION.

4. HAVING REGARD TO EVIDENCE AND TO THE SUBMISSIONS OF THE PARTIES WE FIND THAT THERE ARE ISSUES OF LAW AND FACT THAT HAVE BEEN RAISED WHICH MIGHT PROPERLY BE DETERMINED BY A

PROVINCIAL JUDGE. WE THEREFORE CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT THAT IT ALLEGEDLY DID VIOLATE SECTION 59(1) OF THE LABOUR RELATIONS ACT.

5. THE APPROPRIATE DOCUMENTS WILL ISSUE.

INDEXED ENDORSEMENTS - SECTION 65

17183-69-U: INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS (COMPLAINANT) v. PHOENIX PAPER PRODUCTS LTD. (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND O. HODGES.

APPEARANCES AT THE HEARING: L. A. MACLEAN, GILBERT HAY AND R. CASSON FOR THE COMPLAINANT; ROBERT MCCOMB, ROBERT DUNCAN AND JAMES NOONAN FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 2, 1970.

1. AT THE COMMENCEMENT OF THE HEARING IN THIS MATTER, THE QUESTION OF THE EMPLOYMENT STATUS OF SANTINA LISI WAS RAISED. THE BOARD HEARD EVIDENCE AND ARGUMENT UPON THIS ISSUE.

2. APPROXIMATELY A YEAR AND A HALF AGO, A NOTICE WAS POSTED IN THE PLANT STATING THAT SANTINA LISI WAS A FORELADY, LISI AGREED THAT SUCH A NOTICE HAD BEEN POSTED. NOTWITHSTANDING THIS, LISI STATED, IN VERY FORCEFUL TERMS, THAT SHE WAS NOT A FORELADY. SHE DENIED THAT SHE HAD THE POWER TO HIRE OR FIRE. SPECIFICALLY SHE DENIED DISCHARGING FOUR EMPLOYEES ON JULY 15, 1969. SHE SAID THAT THESE WERE EMPLOYEES WITH WHOM SHE WAS SATISFIED AND THAT SHE WAS GIVEN A LIST OF THEIR NAMES BY CHRIS VAN LEGGELO, PLANT SUPERINTENDENT, AND WAS TOLD BY HIM TO TELL THEM THEY WERE FIRED. SHE ALSO DENIED DISMISSING AN EMPLOYEE WHOSE FIRST NAME WAS JOSEPHINE. SHE SAID, THE LATTER WAS DISMISSED BY THE OWNER OF THE FIRM. SHE TESTIFIED THAT THE OWNER HAD ASKED HER TO TELL JOSEPHINE THAT SHE WAS SPENDING TOO MUCH TIME IN THE WASHROOM AND WAS NOT WORKING ENOUGH AND THAT HE DISCHARGED HER.

3. LISI STATED THAT BEFORE THE POSTING OF THE NOTICE WHICH SAID SHE WAS TO BE FORELADY, SHE OPERATED A PUNCH MACHINE. SHE SAID THAT MR. DUNCAN, MANAGER OF THE PLANT, TOLD HER TO MOVE FROM THE PUNCH MACHINE AND "WATCH THE OTHER WOMEN AND SEE WHAT THEY WERE DOING". THERE WERE ABOUT 19 OR 20 WOMEN WORKING AT A TABLE PLACING GOODS IN BOXES AND THESE WERE THE WOMEN SHE WAS TO

WATCH. SHE SAID SHE WAS NOT WATCHING ALL THE TIME BECAUSE SHE WAS WORKING HARDER THAN THE WOMEN. SHE OCCUPIED ONE SIDE OF THE TABLE WHILE THE OTHER WOMEN WORKED OPPOSITE TO HER.

4. SHE RECALLED ATTENDING ONE MEETING WITH DUNCAN AND OTHER SUPERVISORY PEOPLE WHERE THEY DISCUSSED PRODUCTION, QUALITY CONTROL AND THE WORKERS. SHE STATED THAT WHEN ASKED, SHE TOLD THE MEETING THAT SHE THOUGHT EVERYONE WAS WORKING WELL AND THERE WAS ENOUGH PRODUCTION. THE EVIDENCE OF THE COMPANY WITNESSES WAS THAT SHE HAD ATTENDED AT LEAST TWO MEETINGS OF MANAGEMENT SINCE HER APPOINTMENT AND THAT THERE HAD BEEN SEVERAL OTHER MEETINGS WHICH SHE DID NOT ATTEND. THE MEETINGS ARE NOT SCHEDULED AND ARE SIMPLY CALLED WHEN THE NEED IS FELT.

5. MR. DUNCAN APPOINTED SANTINA LISI FORELADY. HE STATED THAT HE HAD GIVEN HER AUTHORITY TO HIRE AND DISCHARGE FEMALE EMPLOYEES AT THE TIME OF HER APPOINTMENT. SHE WAS GIVEN AN INCREASE IN MAY BECAUSE OF HER PROMOTION. OTHER GIRLS RECEIVED AN INCREASE AT THE SAME TIME BUT LESS THAN SHE DID. HE SAID THAT IN THE CASE OF JOSEPHINE SHE HAD EXERCISED HER AUTHORITY TO DISCHARGE. DUNCAN SAID THAT JOSEPHINE CAME TO SEE HIM THE DAY SHE WAS FIRED. HE SAID, SHE WAS CRYING OVER THE LOSS OF THE JOB AND APPEALED TO HIM. SHE WAS ACCOMPANIED, HE SAID, BY AN ITALIAN CHAP WHO INTERPRETED FOR HER. DUNCAN SAID, HE STOOD BEHIND LISI'S DECISION TO FIRE THE EMPLOYEE. WITH RESPECT TO THE FOUR EMPLOYEES WHO WERE DISCHARGED IN JULY 1969, THE COMPANY'S WITNESSES MAINTAIN THAT LISI COMPLAINED ABOUT THEIR WORK AND WAS TOLD SHE HAD THE AUTHORITY TO DISCHARGE THEM. DUNCAN TESTIFIED THAT THEIR DISCHARGE WAS LISI'S DECISION.

6. VAN LEGGELO IDENTIFIED LISI AS THE FORELADY AT THE PACKING TABLE. HE SAID A NOTICE HAD BEEN POSTED ABOUT TWO YEARS AGO APPOINTING HER A FORELADY UNDER HIS DIRECTION OR PLANT SUPERINTENDENT. SHE WAS TO BE "HEAD OF ALL THE GIRLS AND EVERYTHING THAT GOES ON WITH THE GIRLS". HE TESTIFIED THAT SHE WOULD COME TO HIM IF SHE NEEDED A GIRL AND HE WOULD TELL HER "IF YOU NEED A GIRL - HIRE ONE". LISI WOULD INTERVIEW THE PERSON TO BE HIRED. THE WITNESS WAS POSITIVE THAT LISI HAD HIRED GIRLS BUT WAS UNABLE TO REMEMBER THE NAMES OF THOSE SHE HAD HIRED. HE STATED THAT SHE HAD AUTHORITY TO FIRE AND ADDED THAT SHE HAD FULL AUTHORITY OVER THE GIRLS. HE SAID THE GIRLS HAVE TO SEE LISI ABOUT GETTING TIME OFF AND THAT SHE HAS AUTHORITY TO GIVE IT. HE SAID THAT LISI COULD BYPASS HIM AND SPEAK DIRECTLY TO DUNCAN WHO MIGHT TELL HER TO HIRE SOME ONE OR FIRE SOME ONE. HE SAID HE HAD NEVER TOLD HER TO FIRE SOME ONE. HE REPLIED THAT SHE WAS FORELADY AND HIS ASSISTANT WITH

RESPECT TO THE GIRLS. HE SAID HE COULD TELL HER TO FIRE SOME ONE BUT HE HAD NEVER DONE SO. HE STATED THAT SHE WOULD ASK HIM ABOUT IT BEFORE SHE HIRED SOME ONE. HE SAID HE MIGHT NOT AGREE WITH HER. HE DID NOT, HOWEVER, SAY WHAT MIGHT FOLLOW SUCH AGREEMENT OR INDEED IF SUCH AN INCIDENT HAD EVER OCCURRED. WHEN VAN LEGGELO WAS ASKED WHO, WITH RESPECT TO HIRING AND FIRING DECIDES, HE REPLIED THAT LISI DOES WITH RESPECT TO THE GIRLS. HE SAID IF SHE SAYS I NEED A GIRL, I WOULD TELL HER TO GO AHEAD AND HIRE ONE. HE DENIES THE ACCOUNT OF THE DISCHARGE AS GIVEN BY LISI AND A FELLOW EMPLOYEE IN WHICH THEY STATED THAT HE AND ANOTHER SUPERVISOR GAVE HER A LIST OF NAMES OF 4 EMPLOYEES AND TOLD HER TELL THESE PEOPLE THEY WERE DISCHARGED. HE STATED LISI DID IT ON HER OWN. VAN LEGGELO TESTIFIED THAT THE EMPLOYEES, JOSEPHINE, WAS DISCHARGED BY LISI DURING HIS ABSENCE FROM THE PLANT AND THAT UPON HIS RETURN LISI TOLD HIM SHE FIRED THE GIRL BECAUSE SHE, LISI, FOUND SHE WAS NO GOOD.

7. SUBSEQUENT TO HER APPOINTMENT AS FORELADY, LISI'S SISTERS IN LAW BECAME EMPLOYEES OF THE COMPANY. THE EVIDENCE IS THAT SHE MADE INQUIRIES OF DUNCAN AS TO THE POSSIBILITY OF HIRING THEM. SHE TESTIFIED THAT DUNCAN TOLD HER SHE COULD HIRE THEM IF THEY WERE GOOD WORKERS. SHE THEN ADVISED THEM THAT THEY WERE HIRED. SHE BROUGHT THEM INTO THE PLANT AND SHOWED THEM WHAT TO DO. THEY WERE NOT INTERVIEWED BY ANYONE ELSE. DUNCAN STATED THAT LISI SPOKE TO HIM ABOUT HIRING THE SISTERS IN LAW, AND THAT THE DECISION WAS LEFT TO HER AS TO WHETHER THEY WERE TO BE TAKEN ON.

8. THE EVIDENCE WITH RESPECT TO LISI'S DUTIES AND RESPONSIBILITIES IS CONFLICTING IN MANY AREAS. THERE IS NO DISPUTE HOWEVER THAT A NOTICE WAS POSTED BY MANAGEMENT ABOUT A YEAR AND ONE HALF BEFORE THIS MATTER AROSE ADVISING THE EMPLOYEES THAT LISI HAD BEEN APPOINTED A FORELADY. IN CONSIDERING THE EVIDENCE AS A WHOLE, WE FIND THIS INSTANCE, ALTHOUGH NOT DECISIVE, TO BE OF SIGNIFICANCE. WE WOULD ALSO REMARK THAT WE TOOK THE OPPORTUNITY TO OBSERVE THE DEMEANOUR OF THE WITNESSES IN THE STAND AND THE MANNER IN WHICH THEY GAVE THEIR TESTIMONY. ON THE WHOLE OF THE EVIDENCE, WE FIND THAT SANTINA LISI WAS NOT MERELY A CONDUIT BETWEEN VAN LEGGELO AND THE FEMALE EMPLOYEES. WE FIND THAT AT THE VERY LEAST SHE HAD THE AUTHORITY TO MAKE EFFECTIVE RECOMMENDATIONS ON MATTERS SERIOUSLY AFFECTING THE EMPLOYMENT STATUS OF THE FEMALE EMPLOYEES. WE FIND THAT SHE EXERCISED MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE ACT AND SHE WAS EMPOWERED TO EXERCISE THEM LONG BEFORE THIS MATTER AROSE. SANTINA LISI IS THEREFORE NOT AN EMPLOYEE FOR THE PURPOSES OF THE ACT.

9. THE MATTER IS REFERRED TO THE REGISTRAR TO LIST FOR CONTINUATION OF HEARING ON ALL OUTSTANDING ISSUES.

17313-69-U: Thomas Feeney and Peter Rennie (Complainants) v. Metropolitan Separate School Board (Respondent).

BEFORE: Rory F. Egan, Vice-Chairman and Board Members O. Hodges and H. F. Irwin.

APPEARANCES AT THE HEARING: J. A. Ryder, Thomas Feeney and Peter Rennie for the complainants; John W. Morden for the respondent.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER H.F.IRWIN: June 10, 1970.

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2. This is an application under section 65 of the Act in which the complainants allege that Thomas Feeney, Peter Rennie, James Ward, William E. Rae, Ronald Glugosch, Mason Douglas, Gerald McIntaggert, T. N. McDonnell, Frank J. Cardona, Kenneth Emberton and John Chisholm have been dealt with by the respondent contrary to the provisions of section 50(a) and 59a(1) of The Labour Relations Act. The complainants request that the above mentioned aggrieved be reinstated with compensation for lost pay.

3. The evidence establishes that employment of the aggrieved was terminated on January 7th, 1970 by Maurice Brennan, Superintendent of Maintenance of the respondent. The complainants allege that the terminations were implemented because the aggrieved were known by the respondent to have supported an application to terminate the bargaining rights held at the time by Local 204 of the Service Employees International Union.

4. The respondent's position is that the aggrieved persons were laid off on January 7th in the implementation of a programme by the respondent to reduce its operating costs in the area of maintenance. The programme involved a shift to employment of outside contractors to carry out the necessary maintenance when the need arose.

5. The respondent also submitted that the complaint ought to be dismissed since the subject matter of the complaint had been processed through the grievance procudure under an existing collective agreement to the point of arbitration by Local 204 of the Service Employees International Union. The fact that the case was withdrawn from arbitration two days before the scheduled hearing ought not, the respondent submitted, affect the validity of this submission. The Board

RESERVED ON THIS POINT AND HEARD THE EVIDENCE.

6. ON THE BASIS OF ALL OF THE EVIDENCE WHICH WAS CONSIDERABLE, THE BOARD FINDS THAT THE COMPLAINANTS HAVE NOT SATISFIED THE ONUS THAT RESTS UPON THEM TO ESTABLISH THAT THE AGGRIEVED PERSONS WERE DEALT WITH CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT. WE SHOULD ADD THAT ON THE EVIDENCE THE BOARD IS SATISFIED THAT THE EMPLOYEES IN QUESTION WERE IN FACT LAID OFF BY THE RESPONDENT AS THE RESULT OF A DECISION, PROPERLY MOTIVATED INSOFAR AS THE LABOUR RELATIONS ARE CONCERNED TO SUBSTITUTE OUTSIDE CONTRACTORS FOR EMPLOYEES IN THE MAINTENANCE SECTION.

7. IN VIEW OF OUR FINDING ON THE EVIDENCE, IT BECOMES UNNECESSARY TO DEAL WITH THE SUBMISSION OF THE RESPONDENT WITH RESPECT TO THE STEPS TAKEN UNDER THE GRIEVANCE PROCEDURE OF THE COLLECTIVE AGREEMENT.

8. THE COMPLAINT IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER O. HODGES: JUNE 10, 1970.

WHILE CONCURRING IN THE DECISION OF THE MAJORITY, I WISH TO EMPHASIZE THAT THE AFFECTED EMPLOYEES WERE LAID-OFF IN ORDER OF SENIORITY. MY FINDING AND DIRECTION THEREFORE IS THAT ANY NEW HIRINGS TO REPLACE THESE SKILLS MAY NOT TAKE PLACE UNTIL THOSE LAID-OFF HAVE BEEN PROPERLY RECALLED TO THEIR JOBS IN THE MAINTENANCE DEPARTMENT, IN ORDER OF THEIR SENIORITY.

TO DO OTHERWISE WOULD CONFIRM THE ALLEGATION OF THE COMPLAINANTS, I.E. THAT THEY WERE DISCHARGED BECAUSE OF THEIR UNION ACTIVITY.

17316-69-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. IDEAL WOODWORKING LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS H.F. IRWIN AND P.J. O'KEEFFE.

APPEARANCES AT THE HEARING: JEFFREY SACK, J.C. HORAN AND DOMINIĆ PAGINNI FOR THE COMPLAINANT; H.L. RITTERSPORN FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 24, 1970.

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2. THIS IS AN APPLICATION PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. AT THE COMMENCEMENT OF THE HEARING THE PARTIES CONSENTED TO THE BOARD'S DEALING WITH THE COMPLAINTS OF ANTONIO PORCO AND BENIGNO PARRINELLO, NOTWITHSTANDING THAT THEY DID NOT APPEAR BEFORE THE EXAMINER. GUISEPPE D'ELIA DID NOT APPEAR AT THE HEARING AND ACCORDINGLY THE COMPLAINT CONCERNING HIM IS DISMISSED.

3. THE UNION CONTENDS THAT THE SEVEN AGGRIEVED PERSONS WERE DEALT WITH CONTRARY TO THE PROVISIONS OF SECTION 50(a) AND 50(c) OF THE LABOUR RELATIONS ACT IN THAT THEY WERE DISCHARGED OR LAID OFF BECAUSE OF THEIR UNION MEMBERSHIP, AND THAT THEY WERE NOT RECALLED TO WORK FOR THE SAME REASONS.

4. THE COMPANY DENIES THE UNION'S CONTENTION AND STATES:

> "THAT AS A RESULT OF A LARGE DECREASE IN ITS SALES AND THE BUILDING UP OF THE COMPANY'S STOCK AS A RESULT OF CONTINUING PRODUCTIONS, IT WAS NECESSARY IN ORDER TO MINIMIZE LOSSES AND IN ORDER TO REDUCE EXPENSES, TO LAY-OFF CERTAIN OF ITS EMPLOYEES.".

5. IN MATTERS OF THIS SORT THE COMPLAINANT MUST PROVE ON THE BALANCE OF PROBABILITIES THAT THE EMPLOYER HAS VIOLATED THE LABOUR RELATIONS ACT. HOWEVER, IN CERTAIN CIRCUMSTANCES, THE ONUS OF PROVIDING A CREDIBLE EXPLANATION FALLS ON THE EMPLOYER WHO ALONE MAY KNOW OR HAVE THE MEANS OF KNOWLEDGE OF THE ACTUAL REASONS FOR THE DISMISSAL. NATIONAL AUTOMATIC VENDING CO. LTD. 1960-64, 2 CLLC PARA 16278.

6. MR. IERACI, ONE OF THE AGGRIEVED EMPLOYEES, TESTIFIED THAT SUBSEQUENT TO HIS LAY-OFF HE CAME TO MR. SLIVKA'S OFFICE AND DURING THE COURSE OF A CONVERSATION MR. SLIVKA STATED THAT PART OF THE REASON FOR LAYING HIM OFF WAS BECAUSE HE HAD JOINED THE UNION. MR. SLIVKA IS THE PRESIDENT AND GENERAL MANAGER OF THE RESPONDENT. MR. IERACI ALSO STATED THAT SLIVKA COMMENTED, "IF THE UNION COMES IN IT MAY BE BETTER TO CLOSE THE FACTORY". MR. SLIVKA DENIED THAT HE MADE THESE STATEMENTS AND TESTIFIED THAT WHEN IERACI CAME TO SEE HIM THAT IERACI STATED, "I HAVE BEEN LAID OFF BECAUSE I SIGNED FOR THE UNION". MR. SLIVKA INDICATED THAT THIS WAS THE FIRST TIME THAT HE KNEW ABOUT THE UNION.

7. MR. SLIVKA ALSO TESTIFIED THAT THE LAY-OFF OCCURRED BECAUSE OF A DECLINE IN BUSINESS AND THIS IS CORROBORATED BY THE FINANCIAL STATEMENT FILED WHICH INDICATED THAT THE THREE

MONTHS ENDING JANUARY 31, 1970 THE RESPONDENT LOST $5,344.52, WHEREAS IN THE PREVIOUS YEAR ITS PROFIT HAD BEEN $5,618.44, REFLECTING A TOTAL LOST IN PROFITS OF $10,962.96 COMPARED TO THE PREVIOUS YEAR. MR. SLIVKA INDICATED THAT THIS WAS THE FIRST TIME THAT THE COMPANY HAD SUFFERED A LOSS FOR APPROXIMATELY FIFTEEN YEARS. HE FURTHER STATED THAT HE HAD NO KNOWLEDGE OF THE UNION'S ORGANIZATIONAL CAMPAIGN, THAT WHEN THE SEVEN AGGRIEVED PERSONS WERE LAID OFF THERE WERE ALSO ELEVEN OTHER PERSONS LAID OFF AND THAT ALL THE EMPLOYEES WERE LAID OFF BECAUSE OF LACK OF WORK. HE INDICATED THAT THE CONTINUING DECLINE IN BUSINESS NECESSITATED FURTHER LAY-OFFS AND CERTAIN MACHINES OPERATED BY SOME OF THE AGGRIEVED PERSONS WERE NOT OPERATING, AND HAD NOT BEEN OPERATING SINCE THE TIME OF THEIR LAY-OFF. HE STATED THAT THE EMPLOYEES HAD NOT REALLY BEEN DISCHARGED, BUT WERE SUBJECT TO RECALL WHEN BUSINESS PICKED UP AND FURTHER THAT THERE WERE CERTAIN EMPLOYEES REMAINING IN THE PLANT WHO WERE KNOWN BY HIM TO BE UNION MEMBERS.

8. HE FURTHER STATED THAT HE KEPT A LIST OF EMPLOYEES WHICH REFLECTED THEIR DESIRABILITY AND THAT THE EMPLOYEES HAD BEEN LAID OFF ACCORDING TO THAT LIST. WHILE SOME OF THE REASONS FOR SELECTING THE SPECIFIC EMPLOYEES FOR LAY-OFF ARE RATHER PRIMITIVE, IT APPEARS THAT THE RESPONDENT COMPANY IS MORE OR LESS A ONE MAN OPERATION AND DOES NOT OPERATE WITH THAT ADMINISTRATIVE OR SCIENTIFIC PRECISION THAT ONE OFTEN FINDS IN LARGER ORGANIZATIONS.

9. MR. SLIVKA RESPONDED TO THE FACT THAT OTHER PERSONS WERE SUBSEQUENTLY HIRED, BY STATING THAT THOSE PERSONS WERE REQUIRED TO DO LABOURING WORK IN THE OUTSIDE YARD AND THAT SOME OF THE AGGRIEVED EMPLOYEES HAD INDICATED A RELUCTANCE TO PERFORM THIS KIND OF MANUAL LABOUR AND HE FELT THAT THE OTHERS WOULD NOT PERFORM THIS WORK.

10. WHEN THE EVIDENCE OF MR. IERACI IS BALANCED AGAINST THE EVIDENCE OF MR. SLIVKA WE ARE UNABLE TO FIND ANYTHING IN THE DEMEANOUR OR TESTIMONY OF THESE TWO WITNESSES WHICH WOULD CAUSE US TO BELIEVE OR DISBELIEVE THE EVIDENCE OF ONE AS OPPOSED TO THE OTHER, AND ACCORDINGLY HAVING REGARD TO THE ONUS OF PROOF IN MATTERS OF THIS NATURE, WE ARE NOT PERSUADED ON THE BALANCE OF PROBABAILITIES THAT MR. IERACI'S VERSION OF HIS CONVERSATION WITH MR. SLIVKA IS THE CORRECT VERSION. THE FACTS TO THIS POINT ARE SUCH THAT THE RESPONDENT'S EXPLANATION IS WITHIN THE REALM OF CREDIBILITY AND WE WOULD HAVE DISMISSED THIS APPLICATION IF IT WERE NOT FOR THE EVIDENCE OF MR. PASQUALE NATO WHO IS A FOREMAN AND WAS CALLED TO TESTIFY BY THE RESPONDENT.

11. MR. ZITANI, ONE OF THE AGGRIEVED EMPLOYEES, STATED

THAT SUBSEQUENT TO HIS LAY-OFF HE HAD A CONVERSATION WITH MR. NATO AND MR. NATO SAID,

> "I KNOW THE REASON WHY YOU WERE LAID OFF
> BUT I CANNOT TELL YOU.".

ON CROSS-EXAMINATION MR. ZITANI FURTHER TESTIFIED THAT MR. NATO SAID,

> "I AM SORRY YOU HAVE BEEN SENT HOME.
> IT'S NOT JUST YOU BUT FOR THEM ALL.
> I KNOW SOMEONE WAS A SPY AND THEREFORE
> I CANNOT TELL YOU.".

MR. ZITANI INDICATED THAT WHEN HE PHONED MR. NATO A SECOND TIME THAT MR. NATO HUNG UP.

12. IN RESPONSE MR. NATO TESTIFIED THAT HE DID NOT SAY ANYTHING ABOUT A SPY, BUT THAT HE KNEW THERE WAS LITTLE WORK AND THE MEN WERE LAID OFF BECAUSE OF LACK OF WORK.

13. MR. SANTIA ALSO TESTIFIED THAT PRIOR TO THE LAY-OFF HE WAS ASKED BY MR. NATO WHETHER HE HAD JOINED THE UNION. MR. NATO TESTIFIED THAT HE ASKED MR. SANTIA ABOUT THE UNION, BUT LATER IN HIS TESTIMONY HE STATED THAT MR. SANTIA HAD VOLUNTEERED THE INFORMATIONA ABOUT THE UNION. THERE IS FURTHER EVIDENCE FROM MR. NATO WHICH IS ALSO CONTRADICTORY.

14. MR. NATO ALSO TESTIFIED HE WAS THE ONE TO SELECT MR. SANTIA AND MR. BUTORI TO BE LAID OFF, WHILE MR. SLIVKA TESTIFIED THAT HE WAS THE ONE WHO MADE THE DECISION TO LAY-OFF BOTH MR. SANTIA AND MR. BUTORI.

15. THE INCIDENTS AND THE TESTIMONY CONCERNING MR. NATO ARE OF SUCH A SERIOUS NATURE THAT INFERENCES MIGHT BE DRAWN WHICH REFLECT ON THE EVIDENCE GIVEN BY MR. SLIVKA AND THEREBY CAUSE US TO DISREGARD HIS TESTIMONY AND ALLOW THE COMPLAINT. A FINDING IN THAT REGARD WOULD BE TANTAMOUNT TO A FINDING THAT MR. SLIVKA COMMITTED PERJURY, AND WHILE WE RECOGNIZE THAT PERSONS MAY FABRICATE TESTIMONY BEFORE THIS BOARD, AFTER CONSIDERING ALL THE TESTIMONY AND THE DEMEANOUR OF THE WITNESSES AND IN ALL THE CIRCUMSTANCES OF THIS CASE WE ARE NOT PREPARED TO MAKE A FINDING IN THAT REGARD.

16. MR. NATO'S EVIDENCE WAS UNSATISFACTORY; HE APPEARED FRIGHTENED AND RELUCTANT TO INVOLVE HIMSELF IN THIS MATTER. AT VARIOUS TIMES IN HIS TESTIMONY HE STATED, "I DON'T KNOW

ANYTHING", OR "I DO NOT REMEMBER", AND THESE EXCLAMATIONS AFTER HAVING GIVEN A DETAILED ACCOUNT OF CERTAIN INCIDENTS. WE ARE OF THE OPINION THAT MR. NATO'S LACK OF UNDERSTANDING OF TRADE UNION ACTIVITY CAUSE HIM TO FEAR CERTAIN REPRISALS WHICH WOULD BE TO HIS DETRIMENT. HE HAD BEEN APPROACHED TO JOIN THE UNION AND HE WAS IN THE POSITION PERHAPS WHERE HE FEARED REPRISALS BY HIS EMPLOYER IF HE DID JOIN OR, IN THE EVENT THAT THE UNION WAS CERTIFIED THE REPRISALS BY THE UNION IF HE DID NOT JOIN. THAT IS NOT TO SAY THAT THESE REPRISALS WOULD HAVE BEEN FORTHCOMING, BUT MR. NATO IN HIS OWN MIND WAS NEITHER FISH NOR FOWL IN THIS SITUATION, AND AS SUCH HE CHOSE NOT TO INVOLVE HIMSELF ON THE ONE HAND, AND ON THE OTHER HAND TO MAKE STATEMENTS THAT WOULD CURRY FAVOUR WITH EITHER THE EMPLOYER OR THE UNION IN THE EVENT HE MIGHT EVENTUALLY BE REQUIRED TO ACCOUNT TO EITHER OF THEM. THIS TENDENCY TO ACT IN HIS OWN SELF-INTEREST HAS LED HIM TO DEPART FROM THE "WHOLE TRUTH". AT TIMES HIS EVIDENCE WAS BOTH ILLOGICAL AND INCOMPREHENSIBLE; OFTEN TRAPPED IN HIS OWN EVASIVENESS HE BECAME BELLIGERENT AND EVEN REFUSED TO CONTINUE TO TESTIFY. HAVING REGARD THEREFORE TO HIS TESTIMONY AND HIS DEMEANOUR IN THE WITNESS' BOX WE ARE NOT PREPARED TO GIVE ANY WEIGHT WHATSOEVER TO MR. NATO'S EVIDENCE.

17. NORMALLY IN THESE CIRCUMSTANCES IF WE WERE TO ACCEPT THE EVIDENCE OF THE UNION'S WITNESS, THEN THE STATEMENTS MADE BY MR. NATO WOULD BE TAKEN AS STATEMENTS BY AN AGENT AGAINST HIS PRINCIPLE OR AS PART OF THE ORGAINIZATIONAL POSITION OF THE RESPONDENT COMPANY IN LAYING OFF THE EMPLOYEES. BECAUSE MR. NATO'S EVIDENCE APPEARED TO BE SO UNRELIABLE WE ARE NOT PREPARED TO GIVE SUFFICIENT WEIGHT TO THAT EVIDENCE IN ALL THE CIRCUMSTANCES OF THIS CASE, PARTICULARLY SO WHERE THAT FINDING WOULD RESULT THAT MR. SLIVKA HAD COMMITTED PERJURY.

18. WHILE WE REJECT MR. NATO'S EVIDENCE IN THAT REGARD, WE ARE SATISFIED THAT HIS EVIDENCE REFLECTS ON THE LAY-OFF OF BOTH MR. SANTIA AND MR. BUTORI. MR. NATO WAS THEIR FOREMAN AND WE ARE SATISFIED THAT HE PARTICIPATED IN THE ULTIMATE DECISION TO LAY-OFF THESE EMPLOYEES. HE KNEW ABOUT MR. SANTIA AND BECAUSE OF HIS RELATIONSHIP TO MR. BUTORI WE INFER THAT HE HAD KNOWLEDGE OF MR. BUTORI'S INVOLVEMENT WITH THE UNION. WHEN WE CONSIDER HIS TESTIMONY WE ARE OF THE OPINION THAT IN SELECTING MR. SANTIA AND MR. BUTORI FOR LAY-OFF THAT MR. NATO MADE THAT SELECTION FULLY CONSCIOUS THAT THEY WERE UNION MEMBERS AND BECAUSE THEY WERE UNION MEMBERS. BECAUSE OF MR. NATO'S POSITION WITH THE RESPONDENT WE THEREFORE FIND THAT MR. SANTIA AND MR. BUTORI WERE DISCHARGED BECAUSE OF UNION ACTIVITY AND THIS IS SO EVEN IF MR. SLIVKA MAY NOT HAVE KNOWN OF THAT ACTIVITY.

19. THE COMPLAINT WITH RESPECT TO THE REMAINING AGGRIEVED EMPLOYEES IS THEREFORE DISMISSED.

20. SINCE THE RESPONDENT HAS VIOLATED SECTIONS 50(a) AND 50(c) OF THE LABOUR RELATIONS ACT WE DETERMINE THAT THE RESPONDENT SHALL FORTHWITH REINSTATE AND RE-EMPLOY MR. SANTIA AND MR. BUTORI IN THE SAME OR EQUIVALENT EMPLOYMENT THAT THEY HAD AT THE DATE OF THEIR DISCHARGE AND THAT MR. SANTIA AND MR. BUTORI RECEIVE COMPENSATION FOR LOSS OF WAGES AND EMPLOYMENT BENEFITS IN AN AMOUNT TO BE DETERMINED BY THE PARTIES. FAILING AGREEMENT BY THE PARTIES IN THESE MATTERS THE BOARD SHALL REMAIN SEIZED OF THIS MATTER.

17685-70-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) v. PYRAMID HOMES (EASTERN) LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: MARTIN LEVINSON, P. J. DUPONT AND J. C. HORAN FOR THE COMPLAINANT, GORDON S. NISBET FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 10, 1970.

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2. THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE ACT. THE COMPLAINANT COMPLAINS THAT ROBERT FERGUSON AND KEN MACKLIN WERE DISCHARGED BY THE RESPONDENT ON APRIL 22, 1970, CONTRARY TO THE ACT.

3. THE EVIDENCE DISCLOSED THAT THE RESPONDENT COMMENCED PRODUCTION IN ITS PLANT WHERE THE AGGRIEVED PERSONS WERE EMPLOYED DURING THE EARLY PART OF MARCH 1970. MACKLIN WAS HIRED BY THE COMPANY SHORTLY PRIOR TO THE TIME PRODUCTION COMMENCED AND HAD WORKED FOR THE COMPANY FOR APPROXIMATELY TWO MONTHS PRIOR TO HIS DISCHARGE. FERGUSON HAD WORKED TWO OR THREE WEEKS PRIOR TO HIS DISCHARGE.

4. THE COMPLAINANT'S REGIONAL ORGANIZER WHO WAS IN CHARGE OF THE UNION'S CAMPAIGN TO ORGANIZE THE RESPONDENT'S EMPLOYEES TESTIFIED THAT HE HAD INSTRUCTED THE RESPONDENT'S EMPLOYEES THAT IF A PAPER WAS PRESENTED FOR THEIR SIGNATURE THAT THEY SHOULD READ IT CARFULLY BEFORE SIGNING SINCE IT MIGHT BE A PETITION AGAINST THE UNION. HE FURTHER ADVISED THE EMPLOYEES THAT IF THEY WERE ASKED TO SIGN A BLANK PIECE OF PAPER TO

ASCERTAIN WHAT THEIR SIGNATURE WAS TO BE USED FOR. BOTH AGGRIEVED PERSONS HAD ASSISTED THE UNION IN ITS CAMPAIGN TO ORGANIZE THE RESPONDENT'S EMPLOYEES.

5. ON APRIL 22, 1970, ALL THE EMPLOYEES IN THE BARGAINING UNIT WERE CALLED TO THE OFFICE, ONE AT A TIME, AND WERE ASKED TO SIGN A SHEET OF PAPER OPPOSITE THE PLACE WHERE THEIR NAMES HAD BEEN TYPED. THE OFFICE GIRL WHO ASKED THEM TO SIGN ADVISED THEM THAT THE LABOUR RELATIONS BOARD REQUIRED THEIR SPECIMEN SIGNATURE IN ORDER TO VERIFY THEIR APPLICATIONS FOR MEMBERSHIP IN THE UNION. ALTHOUGH ALL THE OTHER EMPLOYEES SIGNED THE DOCUMENT AS REQUESTED, MACKLIN AND FERGUSON REFUSED TO SIGN SINCE THE DOCUMENT DID NOT CLEARLY STATE, ON ITS FACE, THE PURPOSE OF THE DOCUMENT.

6. AFTER REFUSING TO SIGN THE DOCUMENT AT THE REQUEST OF THE OFFICE GIRL, MACKLIN AND FERGUSON RETURNED TO THEIR WORK STATIONS. THE RESPONDENT'S GENERAL MANAGER SPOKE TO EACH OF THE AGGRIEVED PERSONS SEPARATELY AND DISCUSSED WITH THEM THEIR REFUSAL TO SIGN THE PAPER. THE GENERAL MANAGER ADVISED THEM OF THE REASONS FOR REQUESTING THEIR SIGNATURES AND AGAIN DIRECTED THEM TO SIGN. HE ALSO ADVISED THEM THAT IF THEY PERSISTED IN THEIR REFUSAL TO SIGN HE WOULD BE FORCED TO DISCHARGE THEM FOR FAILURE TO OBEY AN ORDER. BOTH OF THE AGGRIEVED EMPLOYEES WERE ADAMANT IN THEIR REFUSAL TO SIGN AND WERE DISCHARGED BY THE GENERAL MANAGER.

7. THERE WAS NO EVIDENCE THAT THE COMPANY HAD ACTIVELY OPPOSED THE UNION'S APPLICATION FOR CERTIFICATION. INDEED, NO REPRESENTATIVE OF THE RESPONDENT HAD ATTENDED THE CERTIFICATION HEARING.

8. WHILE A DISCHARGE THAT TAKES PLACE SHORTLY AFTER AN APPLICATION FOR CERTIFICATION IS MADE MAY RAISE SUSPICIONS AS TO THE EMPLOYER'S MOTIVES AND ALTHOUGH SOME OTHER FORM OF DISCIPLINE MAY HAVE BEEN SUFFICIENT TO DEAL WITH THE AGGRIEVED PERSONS' REFUSAL TO OBEY THE ORDER GIVEN IN THIS CASE, WE ARE SATISFIED THAT THE REFUSAL OF THE AGGRIEVED PERSONS TO OBEY THE ORDER WAS THE REAL REASON FOR THEIR DISCHARGE. THE AGGRIEVED PERSONS WERE NOT SELECTED FOR SPECIAL TREATMENT WHEN THEY WERE ASKED TO SIGN THE DOCUMENT. ALL EMPLOYEES IN THE BARGAINING UNIT WERE REQUESTED TO PROVIDE THEIR SPECIMEN SIGNATURE IN THE MANNER DESCRIBED ABOVE. ONLY THE TWO AGGRIEVED PERSONS REFUSED TO DO SO. THEIR REFUSAL TO SIGN THE PAPER AFTER ITS PURPOSE WAS CLEARLY EXPLAINED TO THEM CONSTITUTED NOT ONLY AN OPEN CHALLENGE TO THE AUTHORITY OF MANAGEMENT BUT ALSO TO THE VERACITY OF THE GENERAL MANAGER. THIS TYPE OF CHALLENGE MAY ACCOUNT FOR THE SEVERITY OF THE DISCIPLINE IMPOSED.

9. On all the evidence, we are satisfied that had the aggrieved persons signed the document as requested by the office girl or subsequently as requested by the General Manager, they would not have been dismissed.

10. We accordingly find that the complainant has failed to satisfy us that the respondent discharged the aggrieved persons contrary to the Act. The complaint in this matter is therefore dismissed.

17779-70-U: Local Union No. 132 of the United Rubber, Cork, Linoleum and Plastic Workers of America, A.F.L., C.I.O., C.L.C. (Complainant) v. DUNLOP OF CANADA LIMITED AND SCOTT-ATKINSON ONLY INTERNATIONAL LTD. (Respondents).

BEFORE: J. H. Brown, Q.C., Alternate Chairman, and Board Members E. Boyer and R. W. Teagle.

APPEARANCES AT THE HEARING: J. A. Renwick, Q.C., and P. Ross for the complainant, B. A. Kelsey, J. A. Ronson, E. C. Markwick, C. B. Bullough and F. Churcher for Dunlop of Canada Limited, B. W. Binning and D. Scott-Atkinson for Scott-Atkinson Only International Ltd..

DECISION OF THE BOARD: June 1, 1970.

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2. This is a complaint made under section 65 of The Labour Relations Act. The complainant complains that the aggrieved persons listed in the complaint were dealt with by the respondents contrary to sections 37, 39, 54, 56 and 57 of The Labour Relations Act. The complainant in its complaint sets out thirteen forms of relief which it is seeking for the aggrieved persons.

3. The complaint was listed for hearing by the Board on May 19, 1970 to enable the complainant to show cause why the Board should process the complaint, having regard, among other things, to the nature of relief sought.

4. During the course of the hearing, counsel for the complainant withdrew the complaint as it related to the alleged violations of sections 39, 54, 56 and 57 of the Act and withdrew the complainant's request for the relief sought under the above sections.

5. The complaint as it relates to the respondent Scott-

ATKINSON ONLY INTERNATIONAL LTD. WAS ALSO WITHDRAWN BY COUNSEL FOR THE COMPLAINANT AT THE HEARING.

6. COUNSEL FOR THE COMPLAINANT, HOWEVER, MAINTAINED THAT ON OR ABOUT MAY 4, 1970, AND AT VARIOUS OTHER TIMES WITHIN A TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE ABOVE DATE, CERTAIN NAMED OFFICERS AND DIRECTORS OF THE RESPONDENT DUNLOP OF CANADA LIMITED DEALT WITH THE AGGRIEVED PERSONS LOCATED AT THE COMPANY'S PREMISES AT 870 QUEEN STREET EAST IN TORONTO AND AT OTHER PLACES CONTRARY TO SECTION 37 OF THE ACT. MORE SPECIFICALLY, THE COMPLAINANT ALLEGES THAT THE SAID OFFICERS AND DIRECTIONS OF DUNLOP OF CANADA LIMITED, ON BEHALF OF THE SAID RESPONDENT, DISCHARGED THE AGGRIEVED PERSONS IN BREACH OF THEIR RESPECTIVE CONTRACTS OF SERVICE.

7. THE RELIEF WHICH THE COMPLAINANT IS SEEKING FROM THE BOARD IS A DECLARATION THAT THE NAMED AGGRIEVED PERSONS HAVE BEEN WRONGFULLY DISCHARGED BY THE RESPONDENT DUNLOP OF CANADA LIMITED IN BREACH OF THEIR RESPECTIVE CONTRACTS OF SERVICE. THE COMPLAINANT IS FURTHER SEEKING COMPENSATION FOR THE ALLEGED WRONGFUL DISCHARGE, IN LIEU OF REINSTATEMENT FOR LOSS OF EARNINGS AND OTHER EMPLOYMENT BENEFITS.

8. SECTION 37 OF THE ACT READS:

> A COLLECTIVE AGREEMENT IS, SUBJECT TO AND FOR THE PURPOSES OF THIS ACT, BINDING UPON THE EMPLOYER AND UPON THE TRADE UNION THAT IS A PARTY TO THE AGREEMENT WHETHER OR NOT THE TRADE UNION IS CERTIFIED AND UPON THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN THE AGREEMENT.

9. COUNSEL FOR THE RESPONDENT DUNLOP OF CANADA LIMITED SUBMITS THAT SECTION 37 PROVIDES ONLY THAT A COLLECTIVE AGREEMENT IS BINDING ON THE EMPLOYER, THE TRADE UNION AND UPON THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN THE AGREEMENT. COUNSEL SUBMITS THAT ITS PURPOSE IS ONLY TO DEFINE THE PERSONS BOUND BY A COLLECTIVE AGREEMENT. COUNSEL ARGUES THAT SECTION 37 DOES NOT CREATE AN OFFENCE UNDER THE ACT OR OBLIGATIONS, THE BREACH OF WHICH WOULD GIVE RISE TO ANY PROCEEDING UNDER THE ACT. MORE PARTICULARLY, COUNSEL ARGUES THAT SECTION 37 IS NOT A SECTION IMPOSING OBLIGATIONS AS TO AN EMPLOYER'S CONDUCT WHICH CAN GIVE RISE TO A COMPLAINT UNDER SECTION 65 OF THE ACT.

10. COUNSEL FOR THE COMPLAINANT SUBMITS THAT SECTION 37 IS A SECTION, THE BREACH OF WHICH IS AN OFFENCE WHICH CAN BE

THE SUBJECT OF A COMPLAINT MADE UNDER SECTION 65 OF THE ACT. IN SUPPORT OF HIS POSITION, COUNSEL CITED THE Boivin Case, 67 CLLC 13,013, WHICH IS A DECISION OF THIS BOARD.

11. IN THE Boivin Case, THE COMPLAINT WAS THAT THE RESPONDENT TRADE UNION THROUGH ITS BUSINESS AGENT HAD PROCURED THE DISMISSAL OF THE COMPLAINANT IN VIOLATION OF A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE COMPLAINANT'S EMPLOYER AND THE RESPONDENT TRADE UNION. THE BOARD FOUND THAT THE EVIDENCE SUPPORTED THE ALLEGATION OF THE COMPLAINANT. THE BOARD EXPRESSED THE OPINION IN ITS DECISION THAT THE CONDUCT COMPLAINED OF CONSTITUTED A DEALING WITH THE COMPLAINANT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT AND ENTITLED HIM TO RELIEF PURSUANT TO THE PROCEDURE ESTABLISHED BY SECTION 65 OF THE ACT. THE BOARD AT P. 13,016 STATED:

> THE LABOUR RELATIONS ACT IS DIRECTED TO THE ESTABLISHMENT AND ENCOURAGEMENT OF COLLECTIVE BARGAINING LEADING TO THE MAKING OF COLLECTIVE AGREEMENTS. SECTION 37, IN AID OF THIS POLICY, DECLARES THE BINDING FORCE OF SUCH AGREEMENTS. THE INTENTION OF THE ACT IN THIS REGARD IS CLEAR. IT IS, IN OUR VIEW, LIKEWISE CLEAR THAT THE DELIBERATE PROCURING OF A WRONGFUL BREACH OF SUCH A BINDING AGREEMENT MUST BE, AT LEAST IN THE CIRCUMSTANCES OF THIS CASE, CONTRARY TO THE ACT.

12. THE BOARD ENTERTAINED THE COMPLAINT IN THE Boivin Case BUT, IN ITS DECISION, ACKNOWLEDGED THAT, IN CIRCUMSTANCES OTHER THAN THE ONES BEFORE IT, THE BREACH OF A COLLECTIVE AGREEMENT WOULD NOT NECESSARILY CONSTITUTE VIOLATION OF SECTION 37 OF THE ACT AND CITED THE Heist Industrial Services Case, 63 CLLC 1123. IN THAT CASE, INDIVIDUAL EMPLOYEES COMPLAINED, PURSUANT TO SECTION 65, THAT THEIR EMPLOYER HAD FAILED TO ABIDE BY THE TERMS OF A COLLECTIVE AGREEMENT, AND THAT THEY HAD BEEN UNABLE TO OBTAIN REDRESS FOR THEIR GRIEVANCES THROUGH THE UNION, WHICH WAS THEIR BARGAINING AGENT, BECAUSE OF THE INACTIVITY OF THE UNION AND ITS OFFICERS IN ADMINISTRATING THE AGREEMENT. IN ITS DECISION IN THE Heist Case, THE BOARD STATED AT 1124:

> FAILURE TO OBSERVE THE TERM OF A COLLECTIVE AGREEMENT, STANDING BY ITSELF, IS NOT A CONTRAVENTION OF ANY PROVISION OF THE ACT. IN SO FAR AS THE COMPLAINANTS HERE REST THEIR CASE ON THE ALLEGED VIOLATION OF THE TERMS

OF THE COLLECTIVE AGREEMENT, THEY HAVE THEREFORE FAILED TO ESTABLISH THAT THEY HAVE BEEN DEALT WITH CONTRARY TO THE ACT. INDEED, THE ACT EXPRESSLY PROVIDES IN SECTION 34 THAT THE REMEDY FOR FAILURE TO OBSERVE THE PROVISIONS OF A COLLECTIVE AGREEMENT IS THROUGH THE PROCESSING OF A GRIEVANCE, IN RESPECT OF SUCH FAILURE, TO ARBITRATION.

13. THE BOARD IN ITS DECISION IN THE BOIVIN CASE INDICATED ITS AGREEMENT WITH THE REASONING OF THE BOARD IN THE HEIST CASE IN DISMISSING THE COMPLAINT.

14. THERE ARE NO CIRCUMSTANCES SET OUT IN THE INSTANT COMPLAINT WHICH LEAD US TO CONCLUDE, AS THE BOARD DID IN THE BOIVIN CASE, THAT THERE HAS BEEN A BREACH OF THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE COMPLAINANT AND THE RESPONDENT DUNLOP OF CANADA LIMITED WHICH WOULD CONSTITUTE A VIOLATION OF SECTION 37 OF THE ACT. INDEED, THE COMPLAINANT IN ITS COMPLAINT DID NOT PROVIDE ANY PARTICULARS OF THE NATURE OF THE ALLEGED OFFENCES COMMITTED BY THE COMPANY WHICH CONSTITUTE A CONTRAVENTION OF SECTION 37, OTHER THAN TO STATE THAT CERTAIN NAMED OFFICERS AND DIRECTORS OF THE COMPANY DISCHARGED THE AGGRIEVED PERSONS IN BREACH OF THEIR RESPECTIVE CONTRACTS OF SERVICE.

15. WHEN A TRADE UNION HOLDS THE BARGAINING RIGHTS UNDER A COLLECTIVE AGREEMENT FOR A UNIT OF EMPLOYEES OF AN EMPLOYER, IT IS AN ARGUABLE QUESTION AS TO WHAT INDIVDUAL CONTRACT OF SERVICE REMAINS BETWEEN THE BARGAINING UNIT EMPLOYEES AND THEIR EMPLOYER AND THE NATURE AND EXTENT OF ANY RESIDUAL CONTRACT (SEE LE SYNDICAT CATHOLIQUE DES EMPLOYÉS DE MAGASINS DE QUÉBEC, INC. V. LA COMPAGNIE PAQUET LTÉE, 59 CLLC 933). LET US ASSUME FOR PURPOSES OF ARGUMENT, HOWEVER, THAT THERE ARE, AS IS SUBMITTED BY COUNSEL FOR THE COMPLAINANT, RESIDUAL INDIVIDUAL CONTRACTS OF SERVICE BETWEEN THE AGGRIEVED PERSONS AND DUNLOP OF CANADA LIMITED WHICH HAVE BEEN BREACHED BY THE SAID RESPONDENT COMPANY. IN A COMPLAINT UNDER SECTION 65, IT MUST BE SHOWN THAT THE AGGRIEVED PERSONS HAVE BEEN DEALT WITH CONTRARY TO THE ACT. THE COMPLAINANT ALLEGES IN ITS COMPLAINT THAT THE AGGRIEVED PERSONS WERE DEALT WITH CONTRARY TO SECTION 37 OF THE ACT. BASED ON THE ABOVE ASSUMPTIONS, THERE CAN BE NO CONCEIVABLE VIOLATION OF SECTION 37 WHICH SIMPLY DEFINES THE BINDING EFFECT OF A COLLECTIVE AGREEMENT. IN OTHER WORDS, THE ALLEGATIONS OF THE COMPLAINANT AS SET OUT IN ITS COMPLAINT DO NOT ESTABLISH A PRIMA FACIE CASE THAT THE AGGRIEVED PERSONS HAVE BEEN DEALT WITH CONTRARY TO THE LABOUR RELATIONS ACT.

16. Even if we again assume, for purposes of argument only, that the respondent company has acted in breach of its collective agreement and by so doing has violated section 37 of the Act, the complainant has a remedy under the collective agreement which is still in effect between the two parties. The Board has consistently taken the position that where a remedy is available to an aggrieved person or persons by way of a grievance and arbitration procedure under a collective agreement, it ought not to entertain a complaint under section 65 unless there are exceptional circumstances (see Heist Industrial Services Case (supra); National Showcase Company Case, 61 CLLC 929; Wallace Barnes Company Case, 61 CLLC 929; Boivin Case (supra)).

17. Unlike the Boivin Case, the Board finds no exceptional circumstances alleged in the present complaint which would cause it to depart from its general policy. Accordingly, we are of the opinion that we ought not to inquire further into this complaint.

18. The complaint accordingly is dismissed.

17793-70-U: International Woodworkers of America (Complainant) v. Pyramid Homes (Eastern) Limited (Respondent).

BEFORE: J. D. O'Shea, Q.C., Vice-Chairman, and Board Members H. F. Irwin and P. J. O'Keeffe.

APPEARANCES AT THE HEARING: Martin Levinson, P. J. Dupont and J. C. Horan for the complainant, Gordon S. Nisbet for the respondent.

DECISION OF THE BOARD: June 10, 1970.

. . .

2. This is a complaint for relief under section 65 of the Act. The complainant complains that Fred Foote was discharged by the respondent on Monday, May 4th, 1970, contrary to the Act.

3. The evidence disclosed that the respondent's plant where the aggrieved person was employed was a new plant which had commenced operations in March 1970. The aggrieved person was hired on April 20, 1970 and was required to install aluminum window frames in mobile homes manufactured by the respondent. In this capacity, the aggreived person was

REQUIRED TO OPERATE AN ELECTRICAL SCREW DRIVER. ALTHOUGH GIVEN INSTRUCTIONS ON HIS JOB AND CORRECTED FROM TIME TO TIME AS MISTAKES WERE MADE, IT WAS APPARENT ON MR. FOOTE'S OWN EVIDENCE THAT HIS WORK WAS NOT SATISFACTORY. COMPLAINTS WERE MADE WITH RESPECT TO HIS WORK BY HIS FOREMAN AND BY THE PERSON DOING THE FINAL INSPECTION AT THE END OF THE PRODUCTION LINE.

4. ON THURSDAY, APRIL 30TH, MR. FOOTE WAS ABSENT FROM WORK AND ATTENDED THE UNION'S CERTIFICATION HEARING IN TORONTO. APPARENTLY, MR. FOOTE DID NOT REQUEST PERMISSION TO ABSENT HIMSELF FROM WORK. MR. FOOTE TESTIFIED THAT HE TOLD HIS FOREMAN THAT HE WOULD NOT BE AT WORK ON APRIL 30TH, HOWEVER, MR. FOOTE VOLUNTEERED THAT HE DOES NOT KNOW WHETHER HIS FOREMAN HEARD HIM. NO REPRESENTATIVE OF THE COMPANY ATTENDED THE CERTIFICATION HEARING ON APRIL 30TH.

5. ON FRIDAY, MAY 1ST, WHEN MR. FOOTE RETURNED TO WORK HE WAS TAKEN OFF HIS JOB OF INSTALLING ALUMINUM WINDOW FRAMES AND WAS ASSIGNED WORK OF INSTALLING INSULATION ON THE ROOF OF THE MOBILE HOMES. MR. FOOTE TESTIFIED THAT THE JOB OF INSTALLING INSULATION WAS A MUCH EASIER JOB THAN THE JOB OF INSTALLING ALUMINUM WINDOW FRAMES. ON MONDAY, MAY 4TH, AT APPROXIMATELY 4:30 P.M., MR. FOOTE WAS ADVISED THAT HIS SERVICES WERE NO LONGER REQUIRED.

6. AT THE HEARING, THE GENERAL MANAGER AND AN EMPLOYEE ENGAGED IN INSPECTION WORK TESTIFIED THAT MR. FOOTE WAS NOT CAPABLE OF PROPERLY PERFORMING THE JOB OF INSTALLING WINDOW FRAMES. THE COMPANY ACCORDINGLY GAVE HIM A SECOND CHANCE AND ASSIGNED HIM TO THE WORK OF INSTALLING INSULATION. THE GENERAL MANAGER FRANKLY ACKNOWLEDGED THAT HE DID NOT GIVE MR. FOOTE VERY MUCH INSTRUCTION ON THE NATURE OF THE WORK OF INSTALLING INSULATION SINCE THAT WORK WAS THE EASIEST WORK IN THE PLANT AND WAS NOT OF A DIFFERENT NATURE. AFTER A TWO-DAY TRIAL, THE GENERAL MANAGER DETERMINED THAT MR. FOOTE WAS UNSATISFACTORY ON HIS NEW JOB AND HE THEREFORE DETERMINED TO CAUSE HIM TO BE DISMISSED. THE GENERAL MANAGER ACCORDINGLY INSTRUCTED MR. FOOTE'S FOREMAN TO DISCHARGE HIM.

7. THE GENERAL MANAGER TESTIFIED THAT HE HAD NO KNOWLEDGE OF THE FACT THAT MR. FOOTE HAD ATTENDED THE CERTIFICATION HEARING IN TORONTO AT THE TIME HE DECIDED TO DISCHARGE HIM AND THAT HIS APPEARANCE AS A WITNESS BEFORE THE ONTARIO LABOUR RELATIONS BOARD HAD NO BEARING ON HIS DECISION TO DISMISS MR. FOOTE.

8. HAVING ASSESSED ALL THE EVIDENCE IN THIS CASE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THE REASONS

GIVEN BY THE COMPANY FOR THE DISCHARGE OF MR. FOOTE WERE THE REAL REASONS FOR HIS DISCHARGE. THE COMPANY'S EVIDENCE WITH RESPECT TO MR. FOOTE'S INCOMPETENCE WAS SUPPORTED BY THE TESTIMONY OF MR. FOOTE HIMSELF. WE FIND THAT THE COMPLAINANT HAS FAILED TO SATISFY US THAT MR. FOOTE'S TESTIMONY BEFORE THE ONTARIO LABOUR RELATIONS BOARD WAS A FACTOR CONSIDERED BY THE COMPANY IN ITS DECISION TO DISCHARGE MR. FOOTE.

9. THIS COMPLAINT IS THEREFORE DISMISSED.

INDEXED ENDORSEMENT - SECTION 47A

16997-69-M: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. RONER CONSTRUCTION LIMITED; MIRON-WIGGERS CONSTRUCTION LIMITED; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1071; LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 597 (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: W. I. C. BINNIE AND E. VANDERKLOET FOR THE APPLICANT; H. L. MORPHY FOR RONER CONSTRUCTION LIMITED; J. DONALD TEMPLEMAN FOR MIRON-WIGGERS CONST. LTD.; A. LALONDE FOR CARPENTERS LOCAL 1071; FRED BECKSTEAD FOR LABOURERS LOCAL 597.

DECISION OF THE BOARD: JUNE 16, 1970.

1. IN ITS DECISION DATED FEBRUARY 5, 1970 THE BOARD DEALT WITH PRELIMINARY OBJECTIONS TO ITS JURISDICTION RAISED BY THE RESPONDENTS IN THIS APPLICATION. HAVING DECLINED TO SUSTAIN RESPONDENTS' OBJECTIONS, THE BOARD NOW PROPOSES TO DEAL WITH THE OTHER ISSUE RAISED IN THIS APPLICATION FOR RELIEF UNDER SECTION 47A OF THE LABOUR RELATIONS ACT.

2. THE APPLICANT CALLED EVIDENCE IN SUPPORT OF ITS APPLICATION. THE RESPONDENTS DID NOT PRESENT ANY EVIDENCE SO THAT THAT OF THE APPLICANT STANDS UNCONTRADICTED.

3. THE APPLICANT IDENTIFIED AND FILED A COLLECTIVE AGREEMENT MADE BETWEEN IT AND MIRON-WIGGERS CONSTRUCTION LIMITED, HEREINAFTER REFERRED TO AS MIRON-WIGGERS. THE AGREEMENT, EFFECTIVE FROM MAY 1,

1969 UNTIL AUGUST 31, 1970, RECOGNIZES THE APPLICANT AS BARGAINING AGENT FOR ALL EMPLOYEES OF MIRON-WIGGERS CONSTRUCTION LIMITED, WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT, IN GEOGRAPHIC AREAS WITHIN WHICH THE PRESENT MATTERS AROSE.

4. THE EVIDENCE ESTABLISHED THAT BY LETTERS PATENT DATED OCTOBER 3, 1969, A CHARTER WAS ISSUED BY THE MINISTER OF FINANCIAL AND COMMERCIAL AFFAIRS OF THE PROVINCE OF ONTARIO CREATING A COMPANY UNDER THE NAME OF RONER CONSTRUCTION LIMITED, HEREINAFTER CALLED RONER. AMONG THE OBJECTS OF THIS COMPANY IS THAT OF CARRYING ON THE BUSINESS OF BUILDERS AND CONTRACTORS. THERE WAS NO EVIDENCE AS TO WHO THE TRUE PRINCIPALS ARE NOR AS TO WHO COMPRISES THE PERMANENT DIRECTORS.

5. IT IS THE POSITION OF THE APPLICANT THAT A SALE WITHIN THE MEANING OF SECTION 47A TOOK PLACE BETWEEN MIRON-WIGGERS AND RONER IN WHICH THE LATTER IS SAID TO BE THE PURCHASER AND SUCCESSOR EMPLOYER.

6. THE APPLICANT CALLED MR. VANDERKLOET, AN OFFICER OF THE UNION. HE STATED THAT ON OCTOBER 3, 1969 HE VISITED MIRON-WIGGERS ON UNION BUSINESS. HE TALKED TO MR. JOHN WIGGERS AND SAYS THAT THE LATTER TOLD HIM THAT MIRON-WIGGERS HAD A SIZEABLE CONTRACT WITH AN AMERICAN FIRM IN THE AREA, BUT DUE TO UNION PRESSURE HE WOULD BE FORCED TO SIGN AN AGREEMENT WITH AN INTERNATIONAL UNION. THE WITNESS FURTHER TESTIFIED THAT DURING THE COURSE OF THE CONVERSATION MR. WIGGERS "WHEN TOLD HE COULDN'T ENTER INTO AN AGREEMENT WITH AN INTERNATIONAL (UNION) BECAUSE OF THE EXCLUSIVE AGREEMENT WITH THE APPLICANT" SAID THAT HE WOULD HAVE TO FORM A NEW COMPANY. IN CROSS-EXAMINATION, THE WITNESS SAID THAT HE WAS UNABLE TO RELATE PRECISELY WHAT WAS SAID BY WIGGERS, BUT THAT HE WAS GIVING THE ESSENCE OF THE CONVERSATION OR THE GIST THEREOF. HE WAS EXAMINED AT SOME LENGTH AS TO HIS KNOWLEDGE OF WIGGERS' HEALTH AND AS TO WHETHER HIS ROLE IN LABOUR RELATIONS ON BEHALF OF THE COMPANY HAD DECREASED LATELY. HE SAID HE WAS NOT AWARE OF THAT. ON BEING PRESSED TO RECOLLECT THE CONVERSATION IN MORE DETAIL, THE WITNESS SAID THAT WIGGERS TOLD HIM THAT HIS COMPANY HAD OBTAINED A SIZEABLE CONTRACT WITH AN AMERICAN FIRM "AND WAS NEGOTIATING A CONTRACT WITH THIS FIRM". THE WITNESS ADDED THAT WIGGERS TOLD HIM THIS COMPANY DID NOT WANT LABOUR TROUBLES AND THAT HIS COMPANY COULD NOT GET THE CONTRACT WITHOUT THE INTERNATIONAL UNIONS. WIGGERS WOULD NOT TELL THE WITNESS THE NAME OF THE COMPANY CONCERNED.

7. MR. JOHN LYMIS, A FOREMAN EMPLOYED BY MIRON-WIGGERS, GAVE EVIDENCE WITH RESPECT TO A MEETING WHICH HE SAID WAS HELD IN THE OFFICE OF MIRON-WIGGERS ON OCTOBER 4, 1969. THE MEETING, THE WITNESS SAID, WAS CALLED BY MR. FRANK MIRON WHOM HE STATED WAS THE PRESIDENT OF MIRON-WIGGERS. HE STATED THAT MIRON INFORMED THE MEETING, WHICH COMPRISED ABOUT SEVENTY-FIVE PER CENT OF THE EMPLOYEES, ABOUT CERTAIN

UNION PROBLEMS THAT HAD COME UP. MIRON FURTHER STATED, ACCORDING TO THE WITNESS, THAT MIRON-WIGGERS WAS THE SUCCESSFUL TENDERER ON THE WINCHESTER ARMS COMPANY PLANT AT COBOURG. THE WITNESS SAID THAT MIRON POINTED OUT THAT THERE WAS "ONE CONDITION CONTINGENT" WHICH WAS THAT THE COMPANY HAD TO SIGN AN AGREEMENT WITH THE UNITED BROTHERHOOD OF CARPENTERS AND WOULD THEREFOR HAVE TO FORM A SEPARATE DIVISION. A DISCUSSION THEN TOOK PLACE BETWEEN MIRON AND THE EMPLOYEES. MIRON, ACCORDING TO LYMIS, TOLD THE GATHERING "THEY" WERE GOING TO SIGN UP A CONTRACT WITH WINCHESTER CONTINGENT UPON A CONTRACT WITH THE CARPENTERS - THE TWO WERE TIED TOGETHER. IN CROSS-EXAMINATION, THE WITNESS TESTIFIED THAT MIRON SAID THEY WANTED TO BE OPEN AND FRANK ABOUT THE MATTER - THAT HE DID NOT WANT THE EMPLOYEES TO HEAR ABOUT THE SITUATION BY THE GRAPE-VINE- THAT THEY WERE SIGNING WITH THE UNITED BROTHERHOOD BECAUSE THEY WERE FORCED TO GO IN THAT DIRECTION. THE WITNESS SAID THAT IT WAS MADE CLEAR THAT BECAUSE OF THE LABOUR SITUATION MIRON-WIGGERS COULD NOT DO THE JOB. THE WITNESS STATED THAT THEY WERE TOLD THAT WINCHESTER WAS SATISFIED WITH MIRON-WIGGERS AND THAT THEY WOULD BE AWARDED THE CONTRACT CONDITIONAL UPON SIGNING UP WITH THE UNITED BROTHERHOOD - THAT THIS WAS THE ONLY WAY TO EXECUTE THE JOB AND MAKE MONEY. HE ADDED THAT MIRON TOLD THE MEETING THAT IF THEY FORMED A NEW DIVISION, THERE WAS NO PROBLEM.

8. IT WAS SUGGESTED TO THE WITNESS IN CROSS-EXAMINATION THAT MIRON HAD NOT USED THE WORD "DIVISION". THE WITNESS REITERATED THAT MIRON HAD SAID THEY WOULD HAVE TO ORGANIZE A NEW DIVISION TO BE ABLE TO SIGN UP WITH THE UNITED BROTHERHOOD. HE SAID MIRON GAVE THE IMPRESSION IT WOULD BE A DIVISION OF MIRON-WIGGERS. THE WITNESS SAID THAT MIRON TOLD THE EMPLOYEES THAT THE SAME PRINCIPALS - THE SAME PEOPLE WOULD BE INVOLVED AND SOME OF MIRON-WIGGERS' SUPERINTENDENTS WOULD GO WITH THE NEW ENTITY. IN REPLY TO A FURTHER QUESTION, HE STATED THAT THERE WAS A LONG NUMBER MENTIONED WITH RESPECT TO THE NEW DIVISION. HE AGREED THAT MIRON INDICATED A NEW ENTITY WOULD BE CREATED AND THAT THE EMPLOYEES OF MIRON-WIGGERS WOULD NOT BE EMPLOYED ON THE JOB. HE FURTHER AGREED THAT MIRON STATED THAT HE WANTED THE EMPLOYEES TO KNOW THAT. THE WITNESS SAID HE ASKED IF THIS WAS FAIR-DEALING WITH THE MEMBERS OF C.L.A.C. THE ANSWER WAS, HE STATED, THAT IT WAS THE ONLY WAY THEY COULD GET THE WORK - THAT THEY DID NOT FEEL GOOD ABOUT IT.

9. THE WITNESS, VANDERKLOET, VISITED THE SITE IN COBOURG, ONTARIO WHERE WINCHESTER WESTERN ARMS COMPANY LIMITED WERE BUILDING A PLANT. HE OBSERVED THAT RONER WAS WORKING ON THE JOB. HE SPOKE TO A HERMAN LYMIS WHO WAS IN CHARGE OF THE PROJECT FOR RONER. LYMIS HAD FORMERLY WORKED FOR MIRON-WIGGERS AS A FOREMAN. THE WITNESS SAID HE SAW SEVERAL PURCHASE ORDERS ON THE DESK FROM SEVERAL SUPPLY COMPANIES ADDRESSED TO MIRON-WIGGERS. THIS WAS IN

A SHACK ON THE WINCHESTER WORK SITE. THE WITNESS STATED THAT THERE WERE OTHER CONTRACTORS ON THE SITE BESIDES RONER.

10. HERMAN LYMIS STATED THAT IN OCTOBER OF 1969, HE WAS EMPLOYED BY MIRON-WIGGERS AND HAD WORKED FOR THAT FIRM FOR ABOUT 12 YEARS. HE SAID THAT RONER CAME TO HIS ATTENTION AT THE WINCHESTER PROJECT ABOUT THE MIDDLE OF OCTOBER 1969. HE WAS EMPLOYED AT THE PROJECT IN THAT MONTH AS A SUPERVISOR FOR RONER. HE COMMENCED WORK THERE ON OCTOBER 20, 1969. SUBSEQUENTLY, HE HIRED TRADESMEN TO WORK FOR RONER. HE IDENTIFIED A COLLECTIVE AGREEMENT PURPORTING TO BE BETWEEN RONER AND LOCAL 597 OF THE LABOURERS INTERNATIONAL. HE ALSO IDENTIFIED AN AGREEMENT PURPORTING TO BE BETWEEN RONER AND THE UNITED BROTHERHOOD OF CARPENTERS AS THE SAME AS ONE WHICH WAS GIVEN TO HIM ON THE JOB. IN ADDITION TO PERSONS HIRED DIRECTLY BY HIM, THE WITNESS SAID HE SUPERVISED SUB-CONTRACTORS. HE TESTIFIED THAT ON THE JOB SITE, RONER DEALT DIRECTLY WITH THE PROJECT MANAGER FOR THE WINCHESTER ARMS COMPANY THROUGH A MR. WIKKERINK WHO WAS HIS SUPERVISOR AND WHO IS EMPLOYED BY RONER.

11. THE WITNESS STATED THAT RONER'S OFFICE STAFF AT COBOURG CONSISTED OF ONE GIRL AND MR. WIKKERINK. HE STATED THAT THIS WAS ALSO THE OFFICE OF MIRON-WIGGERS. HE WAS ASKED THE NAMES OF THE PRINCIPLAS OF RONER. HIS TESTIMONY IS NOT CLEAR ON THIS POINT. HE SAID AT FIRST THAT THE RONER CHEQUES WERE SIGNED BY THE SAME PEOPLE AS SIGN MIRON-WIGGERS' CHEQUES. HE THEN ADDED - "THERE MAY BE SOME DIFFERENT". HE LATER STATED, IN CROSS-EXAMINATION, THAT WIKKERINK SIGNED THE RONER PAY CHEQUES AND THAT HE HAD NEVER SIGNED MIRON-WIGGERS' CHEQUES. THE WITNESS WAS HIRED BY RONER ON A SALARY BASIS, WHEREAS HE HAD BEEN PAID AN HOURLY RATE BY MIRON-WIGGERS WHEN EMPLOYED BY THAT COMPANY.

12. THE WITNESS SAID HE WOULD ORDER ANY EQUIPMENT HE NEEDED ON THE JOB, SOME OF WHICH CAME FROM MIRON-WIGGERS. THE TRAILER USED AT THE SITE AS AN OFFICE WAS MIRON-WIGGERS'. NO DETAILS OF HOW THIS ARRANGEMENT CAME ABOUT WERE TENDERED.

13. MR. BECKSTEA, BUSINESS MANAGER AND SECRETARY TREASURER OF LOCAL 597 OF LABOURERS INTERNATIONAL UNION, IDENTIFIED A COLLECTIVE AGREEMENT DATED OCTOBER 24TH, 1969 BETWEEN HIS UNION AND RONER. THE AGREEMENT, THE WITNESS SAID, WAS NEGOTIATED WITH MR. TEMPLETON AND MR. FRANK MIRON.

14. WE FIND THE DIRECT EVIDENCE AND THE REASONABLE INFERENCES DRAWN THEREFROM LEAD TO THE FOLLOWING CONCLUSIONS. IN OR ABOUT THE LATTER PART OF SEPTEMBER OR THE FIRST PART OF OCTOBER 1969, MIRON-WIGGERS NEGOTIATED WITH WINCHESTER WESTERN ARMS CONCERNING

CERTAIN WORK TO BE PERFORMED ON THE CONSTRUCTION OF A PLANT AT COBOURG. THE NEGOTIATIONS LEAD TO A TENTATIVE AGREEMENT WHEREBY MIRON-WIGGERS WOULD UNDERTAKE THE WORK PROVIDED IT FIRST ARRANGED ITS LABOUR RELATIONS SO THAT THERE WOULD BE NO DIFFICULTY WITH RESPECT TO THE EMPLOYMENT OF MEMBERS OF INTERNATIONAL CRAFT UNIONS ON THE PROJECT. THE CONTRACT WAS OBVIOUSLY CONTINGENT UPON MIRON-WIGGERS MAKING SOME ARRANGEMENT IN THIS REGARD.

15. IT WAS APPARENT TO FRANK MIRON, PRESIDENT OF MIRON-WIGGERS THAT, AS HE RELATED IT TO THE EMPLOYEES, THE COLLECTIVE AGREEMENT BETWEEN THAT COMPANY AND THE APPLICANT UNION PRECLUDED THE USE OF INTERNATIONAL UNIONS ON THE PROJECT. THE SOLUTION WAS TO FORM A NEW ENTITY WHICH WOULD, IT WAS BELIEVED, HAVE NO OBLIGATIONS UNDER THE COLLECTIVE AGREEMENT BETWEEN MIRON-WIGGERS AND THE APPLICANT THE NEW ENTITY WOULD THEREFORE BE FREE TO MEET THE STIPULATION OF THE NEGOTIATIONS WITH WINCHESTER WITH RESPECT TO THE USE OF INTERNATIONAL CRAFT UNIONS ON THE PROJECT. IT IS CLEAR THAT THE NEW ENTITY WAS TO BE AN EMANATION OF MIRON-WIGGERS.

16. ON OR ABOUT OCTOBER 3, 1969, AS NOTED, RONER CAME INTO BEING. THERE IS NO EVIDENCE AS TO WHAT ARRANGEMENTS WERE MADE BETWEEN THIS COMPANY AND THE WINCHESTER ARMS COMPANY, BUT THE EVIDENCE IS THAT IT WAS ENGAGED IN CONSTRUCTION WORK AT COBOURG ON A PLANT BEING CONSTRUCTED THERE FOR THE LATTER COMPANY. THERE IS EVIDENCE THAT ONE OF MIRON-WIGGERS' FORMER EMPLOYEES WAS EMPLOYED BY RONER TO SUPERVISE THE PROJECT AND THAT FRANK MIRON, PRESIDENT OF MIRON-WIGGERS, TOOK PART IN THE NEGOTIATIONS BETWEEN RONER AND THE CRAFT UNIONS. SOME MIRON-WIGGERS' EQUIPMENT WAS USED BY RONER ALTHOUGH WE DO NOT KNOW HOW THIS WAS ARRANGED.

17. IN THE ABSENCE OF EVIDENCE TO THE CONTRARY, THE INESCAPABLE INFERENCE IS THAT RONER IS THE "DIVISION" OR OTHER ENTITY REFERRED TO IN FRANK MIRON'S SPEECH TO THE EMPLOYEES. ITS PURPOSE, ALSO DISCERNIBLE FROM THAT SPEECH, WAS TO ENTER INTO AND CARRY OUT A CONTRACT NEGOTIATED BY MIRON-WIGGERS SO THAT THE LATTER COULD "MAKE MONEY". THE CONTRACT WAS VIRTUALLY WITHIN THE GRASP OF MIRON-WIGGERS EXCEPT FOR THE OBSTACLE OF THE CONDITION REQUIRING USE OF INTERNATIONAL UNIONS. MIRON-WIGGERS WAS NOT IN A POSITION TO MEET THAT CONDITION UPON WHICH THE CONTRACT WAS CONTINGENT, BUT RONER, NOT BEING BOUND BY AN AGREEMENT WITH THE APPLICANT WAS, OF COURSE, FREE TO AND DID NEGOTIATE AGREEMENTS WITH THE TRADE UNION RESPONDENTS.

18. THE RESPONDENT ARGUED THAT THE WORD "BUSINESS" CONNOTES AN "ON GOING" ACTIVITY WHICH HAS AS ITS END IN VIEW A PROFIT TO BE MADE. IT STATES THAT WHEN WE SPEAK OF A BUSINESS WE ARE DEALING WITH AN ACTIVITY AS A WHOLE. MIRON-WIGGERS, THE APPLICANT ARGUES, IS IN THE BUSINESS OF SOLICITING CONTRACTS, TENDERING ON

CONTRACTS, CARRYING OUT THE CONTRACTS AND ENGENDERING GOOD WILL. THE ABILITY TO GET BUSINESS GOES TO THE ROOT OF THE COMPANY AS A BUSINESS. IN DEALING WITH THE QUESTION OF BUSINESS WE MUST, THE RESPONDENT ARGUED, DEAL WITH THE TOTALITY OF ITS CAPABILITIES INCLUDING ITS MANAGERIAL CAPABILITIES AS WELL AS ITS ABILITY TO ATTRACT BUSINESS. CONTRACTS IN OPERATION AND CONTRACTS WHICH THE COMPANY WAS CAPABLE OF MAKING ARE PART OF ITS BUSINESS. IT WAS THE BENEFIT OF ITS CAPACITY TO GET THE BUSINESS THAT WAS TRANSFERRED IN THE INSTANT CASE TO RONER. IN OTHER WORDS, AS WE UNDERSTAND THE ARGUMENT, RONER WOULD NOT HAVE BEEN EMPLOYED ON THE JOB HAD IT NOT BEEN FOR THE PRESENCE IN EVERY SENSE, OF MIRON-WIGGERS.

19. ON THE EVIDENCE WE MUST FIND THAT NO FORMAL CONTRACT BETWEEN MIRON-WIGGERS AND WINCHESTER ARMS WAS ESTABLISHED. THERE IS, OF COURSE, ALSO NO EVIDENCE CONCERNING A FORMAL CONTRACT BETWEEN RONER AND WINCHESTER ARMS, ALTHOUGH IT IS PERFECTLY CLEAR THAT RONER DID DO WORK ON THE SITE IN COBOURG FOR THE LATTER COMPANY.

20. THE APPLICANT STATED THAT IT WAS NOT CONCERNED WITH THE TRANSFER OF A CONTRACT. IT WAS PREPARED TO RECOGNIZE A DISTINCTION BETWEEN A BUSINESS AND ONE OF ITS ASSETS. IT RATHER RELIED UPON THE ARGUMENT, AS WE UNDERSTAND IT, THAT MIRON-WIGGERS TRANSFERRED TO OR PERHAPS INFUSED INTO RONER THE FORMER'S ACCEPTABILITY, PRESTIGE AND MANAGERIAL ABILITY IN THE CONSTRUCTION FIELD ALL OF WHICH, THE APPLICANT FELT, COMPRISE PART OF THE COMPANY'S BUSINESS. THE ARGUMENT IS INTERESTING. BUT, WHILE THE INTANGIBLES WITH WHICH IT ATTEMPTS TO DEAL MAY BE AS REAL AS THE CORPORATE FICTION RELIED UPON BY THE RESPONDENTS IN THE ACCOMPLISHMENT OF THEIR DEVICE, THE ARGUMENT IS NOT SUPPORTED BY THE EVIDENCE. WE NEED NOT THEREFORE CONCERN OURSELVES WITH ITS VALIDITY.

21. THERE IS A COMPLETE DEARTH OF EVIDENCE FROM WHICH ANY REASONABLE CONCLUSION MIGHT BE REACHED WITH RESPECT TO WHAT, IF ANYTHING MORE THAN WE HAVE ALREADY INFERRED, TOOK PLACE BETWEEN THE THREE CORPORATIONS INVOLVED. THERE IS NO EVIDENCE OF ANY FINANCIAL TRANSACTION. ADDED TO THAT IS THE POSITIVE EVIDENCE THAT MIRON-WIGGERS' OPERATIONS CONTINUED UNABATED AND UNMODIFIED THROUGHOUT. THERE WAS NO PERCEPTIBLE SEVERANCE OF ANY PORTION OF ITS ACTIVITIES NOR ANY COGNIZABLE DIMUNITION OF ITS ACTIVITIES SUCH AS WOULD TEND TO INDICATE A SALE OR TRANSFER OF A PART OF ITS BUSINESS.

22. IN THE RESULT THEREFORE WE FIND THAT THE APPLICATION HAS FAILED TO ESTABLISH THAT A SALE WITHIN THE MEANING OF SECTION 47A HAS OCCURRED AND THE APPLICATION IS ACCORDINGLY DISMISSED.

INDEXED ENDORSEMENT - SECTION 79(2)

11816-66-M: Local 4509, United Steelworkers of America (Applicant) v. ALGOMA STEEL CORPORATION LIMITED (Respondent).

BEFORE: J. H. Brown, Q.C., Alternate Chairman, and Board Members E. Boyer and H. F. Irwin.

DECISION OF THE BOARD: June 10, 1970.

1. The applicant has applied, pursuant to the provisions of section 79(2) of The Labour Relations Act, for a determination as to whether certain persons are employees of the respondent for the purposes of the Act.

2. Mr. A. A. Morrow, Examiner, was authorized to inquire into and report to the Board on the duties and responsibilities of the 159 persons whose duties and responsibilities were in dispute. Of that number, during the course of the examination conducted by the Examiner, the applicant withdrew its request for a determination by the Board with respect to the status of 49 persons, leaving a total of 110 persons in dispute. Of that number, 95 were examined and it was agreed to by the parties that the evidence relating to 5 of these persons would be applied to the remaining 15 persons.

3. Following the service of the Report of the Examiner as amended by a Supplementary Report, a hearing was held at which the Board entertained the representations of counsel for the applicant and counsel for the respondent as to the effect that should be given to the evidence contained in the Examiner's Report. The Board has carefully considered the Report and the attached exhibits and the submissions of counsel in making its determination on the persons in dispute.

4. Most of the persons in dispute, as of the date of the making of the application, which is the relevant date for purpose of the Board's determinations, held job titles of supervisors, planners and analysts of a variety of types. Their work largely relates to production planning and control, accounting (particularly as it relates to the cost aspects of the respondent's operations) and industrial engineering. Persons working in the latter area, in general terms, are charged with the responsibility of improving productivity and reducing costs. Some of the related functions are the development of administrative control, incentive development, the application of job description and classes and the

DEVELOPMENT OF METHODS AND IMPROVEMENTS.

5. In assessing the Examiner's Report on the persons concerned. we endeavoured to place their positions and job functions in the overall context of the respondent's operations, as revealed by the evidence. In this way, we were better able to appraise the degree of managerial authority which they exercised or the extent of their confidentiality in matters relating to labour relations. As has been recognized by the Board in earlier cases, job titles, especially among office, clerical and technical employees, are not necessarily an accurate criterion by which to make a decision as to the actual responsibility or authority which the holders of these titles possess.

6. In determining whether a person is "managerial" or "confidential", we have considered the nature of the authority and control which persons with what would appear to be management titles, such as "supervisors", exercise over persons working under them. In this regard, an important factor is the influence which they have over such persons' jobs, for example, promotions. The evidence in the instant case is that many of the persons in dispute periodically complete assessment forms evaluating the performance of persons working under them, including whether they are ready for advancement. These forms, which in all cases are completed by their immediate supervisor, by themselves, would indicate that the employment future with the respondent of those persons assessed would be materially affected by the report. On the other hand, it would seem that the assessment forms have definite limitations vis-a-vis their effect on the employment status of the persons concerned. Higher supervision and the personnel office evaluate the assessments and do not necessarily accept them at face value or act on the recommendations contained therein without further inquiries. There are, moreover, certain restrictions as to what management can do notwithstanding the content of the assessment forms because of the personnel policies and procedures of the respondent.

7. Moreover, many of the clerical and technical employees on whom an assessment is made are covered by a collective agreement between the applicant and the respondent or by a collective agreement between the respondent and Local 2251 of the United Steelworkers of America, which agreement would appear to cover what can best be described as "plant" employees. The provisions of the agreements covering wages, working conditions and, in particular, seniority circumscribe the discretionary authority of the supervisory staff for persons

COVERED BY THE AGREEMENTS. WHERE THE PERSONS CONCERNED ARE NOT COVERED BY EITHER OF THE ABOVE REFERRED TO COLLECTIVE AGREEMENTS THE ASSESSMENT FORMS MIGHT HAVE WIDER APPLICATION AND BE OF GREATER SIGNIFICANCE. EVEN IN THOSE INSTANCES, HOWEVER, IT WOULD SEEM FROM THE EVIDENCE THAT THE IMMEDIATE SUPERVISOR OFTEN FULFILS WHAT IS ESSENTIALLY A REPORTING FUNCTION AND THAT HIGHER SUPERVISION AND THE PERSONNEL STAFF OF THE RESPONDENT HAVE THE REAL RESPONSIBILITY FOR DECIDING THE EMPLOYMENT FUTURE OF THE PERSONS CONCERNED WITH THE COMPANY.

8. MANY OF THE PERSONS IN DISPUTE ASSERTED THAT THEY HAD THE AUTHORITY TO HIRE, DISCHARGE AND DISCIPLINE PERSONS WORKING UNDER THEM OR TO EFFECTIVELY RECOMMEND THE SAME. A READING OF THE EXAMINER'S REPORT, HOWEVER, REVEALS THAT OFTEN THE PERSONS MAKING SUCH CLAIMS, IN FACT, HAD NOT EVER EXERCISED THIS CLAIMED AUTHORITY. IN OTHER CASES, RECOMMENDATIONS OF THE ABOVE SORT HAD BEEN MADE TO THEIR OWN SUPERIORS, AND IT WAS THE LATTER PERSONS WHO, AFTER REVIEWING THE CIRCUMSTANCES, MADE THE EFFECTIVE DECISION. DISCIPLINARY ACTION TAKEN BY MANY OF THE PERSONS IN DISPUTE SEEMS TO BE CONFINED LARGELY TO ORAL REPRIMANDS.

9. WITH REGARD TO HIRING, MOST VACANCIES APPEAR TO BE FILLED BY JOB POSTINGS. THAT IS TO SAY, THE JOB IS POSTED AND PERSONS ALREADY IN THE EMPLOY OF THE RESPONDENT MAKE APPLICATION FOR THE JOB. THE APPLICANTS ARE INITIALLY SCREENED BY THE PERSONNEL STAFF WHO IN TURN SOMETIMES REFER THE MORE QUALIFIED CANDIDATES TO THE PERSON WHO WILL BE THEIR IMMEDIATE SUPERVISOR FOR AN INTERVIEW. THE IMMEDIATE SUPERVISOR WILL MAKE A RECOMMENDATION EITHER TO HIS OWN SUPERIOR OR THE PERSONNEL OFFICE AS TO WHICH OF THE CANDIDATES IS BEST SUITED TO THE JOB. WE WOULD ADD THAT WHILE ABILITY AND QUALIFICATIONS ARE IMPORTANT, SENIORITY IS A POTENT FACTOR IN DECIDING WHICH APPLICANT GETS THE JOB. THE EVIDENCE WOULD INDICATE, MOREOVER, THAT IT IS ONLY DURING THE PROBATIONARY PERIOD THAT THE IMMEDIATE SUPERVISOR COULD BE IN A POSITION TO MAKE RECOMMENDATIONS AS TO WHETHER THE SUCCESSFUL APPLICANT WOULD REMAIN IN THE JOB. IT WOULD STILL SEEM, NEVERTHELESS, THAT HIGHER SUPERVISION MAKES THE ULTIMATE DECISION, ALBEIT OFTEN ACTING ON THE REPORTS MADE BY THE IMMEDIATE SUPERVISOR AS TO WHETHER THE PERSON REMAINS PERMANENTLY IN THE JOB OR IS TRANSFERRED TO ANOTHER JOB WITHIN THE COMPANY, OR IS DEMOTED TO HIS FORMER POSITION. ONLY IN RARE AND EXTREME CIRCUMSTANCES WOULD THE EMPLOYEE BE DISCHARGED. WE WOULD FURTHER POINT OUT THAT VIRTUALLY IN NO INSTANCES DO ANY OF THE PERSONS IN DISPUTE IN THIS APPLICATION HIRE OR EFFECTIVELY RECOMMEND THE HIRING OF PERSONS FROM "OUTSIDE" THE COMPANY.

10. A FAIR NUMBER OF PERSONS WITH WHOM WE ARE HERE CONCERNED

TESTIFIED THAT THEY PARTICIPATED IN THE GRIEVANCE PROCEDURE. THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE PARTIES PROVIDES THAT ANY EMPLOYEE HAVING A "DIFFERENCE" SHALL TAKE IT UP WITH THE SUPERVISOR IN CHARGE OF THE SECTION IN WHICH HE WORKS WITHIN A PRESCRIBED TIME PERIOD AND THE SUPERVISOR, WITHIN A SPECIFIED PERIOD, MUST GIVE A "DECISION". THE AGREEMENT FURTHER PROVIDES THAT FAILING A SETTLEMENT THE DIFFERENCE WILL BE CONSIDERED A "GRIEVANCE". THERE IS THEN PROVISION FOR A NUMBER OF STEPS IN A GRIEVANCE PROCEDURE LEADING TO ARBITRATION, WHEN THE GRIEVANCE HAS NOT BEEN SETTLED AT AN EARLIER STAGE. NUMBERS OF THE PERSONS IN DISPUTE CONSIDERED THEMSELVES TO BE IN THE CLASSIFICATION OF "SUPERVISOR" WITH WHOM A "DIFFERENCE" WOULD BE TAKEN UP. INDEED, MANY TESTIFIED THAT PERSONS WORKING UNDER THEM HAD TAKEN UP "DIFFERENCES" WITH THEM. THE EVIDENCE SUGGESTS THAT IN MOST INSTANCES THE "DIFFERENCE" WAS SETTLED AT THAT LEVEL. SETTLEMENTS OR DECISIONS MADE AT THIS INITIAL STAGE, FROM THE EVIDENCE, APPEAR TO HAVE BEEN LARGELY OF A ROUTINE NATURE AND NOT TRULY MANAGERIAL IN CHARACTOR. WHERE, HOWEVER, THE "DIFFERENCE" WAS NOT SETTLED AND BECAME A "GRIEVANCE" THE SUPERVISOR RARELY PLAYED ANY ROLE IN THE SUBSEQUENT GRIEVANCE AND ARBITRATION PROCEDURES OTHER THAN TO OUTLINE THE "DIFFERENCE" TO HIGHER SUPERVISION AND POSSIBLY APPEAR AS A WITNESS, SHOULD THE GRIEVANCE PROCEED TO ARBITRATION. IN OUR VIEW, WHERE THE DEGREE OF PARTICIPATION IN THE GRIEVANCE PROCEDURE IS VERY RESTRICTED IN ITS SCOPE, TAKEN BY ITSELF, IT IS NOT SUFFICIENT TO CONFER ON THE "SUPERVISORS" CONCERNED THE STATUS OF MANAGEMENT NOR DOES IT GIVE THEM A CONFIDENTIALITY IN MATTERS RELATING TO LABOUR RELATIONS.

11. IN QUITE A FEW INSTANCES, PERSONS WITH JOB TITLES WHICH MIGHT ON THEIR FACE SUGGEST THAT THEY WERE MEMBERS OF MANAGEMENT HAD LESS THAN A HANDFUL OF PERSONS WORKING UNDER THEM. MOREOVER, THE EVIDENCE SUGGESTS THE EXISTENCE OF A WHOLE HIERARCHY OF MANAGERIAL PERSONNEL ABOVE THESE "SUPERVISORS". IN SOME INSTANCES, THE NUMBERS OF PERSONS WORKING UNDER THEM RANGED AS HIGH AS A FEW DOZEN. ON THE OTHER HAND, SOME PERSONS IN DISPUTE AND MORE PARTICULARLY SOME OF THE PERSONS CLASSIFIED AS ANALYSTS HAD NO ONE WORKING UNDER THEM. SOMETIMES THE EVIDENCE IS THAT THE ABOVE PERSONS SPEND A HIGH PROPORTION OF THEIR TIME SUPERVISING THE PERSONS UNDER THEM. NOT INFREQUENTLY, HOWEVER, THE TYPE OF SUPERVISION IS OF A ROUTINE AND PRESCRIBED NATURE. MOREOVER, THE DECISIONS THEY ARE CALLED UPON TO MAKE FREQUENTLY FALL WITHIN A POLICY FRAMEWORK ESTABLISHED BY THE RESPONDENT. IN OTHER WORDS, THERE IS LITTLE SCOPE FOR THE EXERCISE OF INDIVIDUAL DISCRETION. ALTERNATIVELY, THE INDEPENDENT DECISIONS WHICH THEY CAN MAKE ARE SO CIRCUMSCRIBED AS NOT TO BE TRULY MANAGERIAL IN NATURE. SOME OF THE PERSONS IN DISPUTE DO HAVE THE AUTHORITY TO

MAKE THE LATTER TYPE OF DECISION. MORE OFTEN, THEY CAN ONLY PROVIDE INFORMATION AND/OR MAKE RECOMMENDATIONS UPON WHICH RECOGNIZED MANAGERIAL PERSONNEL, IN THE FINAL ANALYSIS, MAKE DECISIONS.

12. THE EXERCISE OF DISCRETION AND THE ABILITY TO MAKE INDEPENDENT DECISIONS IS A PARTICULARLY THORNY PROBLEM IN THE CASE OF THOSE PERSONS CLASSIFIED AS PLANNERS AND ANALYSTS. WE ARE INCLINED TO THE VIEW THAT THOSE PERSONS IN THE FOREGOING CLASSIFICATIONS WHOSE JOBS ENTAIL THE MAKING OF INDEPENDENT DECISIONS OR WHO CAN MAKE EFFECTIVE RECOMMENDATIONS WITH REGARD TO SUCH MATTERS AS JOB EVALUATION, METHODS ANALYSIS AND IMPROVEMENTS, AND THE SETTING AND MAINTENANCE OF INCENTIVES AND BONUSES, DO EXERCISE MANAGERIAL FUNCTIONS AND MAY ALSO BE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS BECAUSE OF THE USE THAT IS MADE OF THEIR WORK IN NEGOTIATIONS WITH THE APPLICANT UNION. A PREREQUISITE TO SUCH A DETERMINATION, HOWEVER, IS THAT THEIR DECISIONS AND RECOMMENDATIONS INFLUENCE OR AFFECT IN SOME WAY THE WAGES OR WORKING CONDITIONS OR THE VERY JOBS OF OTHER PERSONS IN THE EMPLOY OF THE RESPONDENT. NOTWITHSTANDING EVEN THE EXERCISE OF A CONSIDERABLE AMOUNT OF INDEPENDENT DISCRETION, IF A PERSON ONLY PROVIDES MATERIAL OR DATA BUT DOES NOT HAVE ANY INFLUENCE ON THE DECISIONS THAT ARE MADE BASED ON THE MATERIAL OR DATA, THEN THE ATTRIBUTES WHICH ARE ASSOCIATED WITH THE EXERCISE OF MANAGERIAL AUTHORITY DO NOT ATTACH TO SUCH PERSONS. RATHER, THEY ARE ONLY ADVISORY TECHNICAL EMPLOYEES.

13. COUNSEL FOR THE RESPONDENT URGED THE BOARD IN MAKING ITS DETERMINATIONS TO CONSIDER WHETHER THERE WAS AN INHERENT CONFLICT BETWEEN THE DUTIES AND RESPONSIBILITIES WHICH CERTAIN OF THE PERSONS IN DISPUTE PERFORM AND THOSE PERFORMED BY BARGAINING UNIT EMPLOYEES. THE EVIDENCE OF A MEMBER OF MANAGEMENT CONTAINED IN THE EXAMINER'S REPORT WOULD INDICATE THAT, IN THIS REGARD, THE RESPONDENT IS REFERRING TO PERSONS IN THE BARGAINING UNIT REPRESENTED BY LOCAL 2251 OF THE UNITED STEELWORKERS OF AMERICA AS WELL AS THOSE IN THE BARGAINING UNIT REPRESENTED BY THE APPLICANT. COUNSEL FOR THE RESPONDENT PARTICULARLY RELATED THIS SUBMISSION TO THE EVIDENCE OF ANANLYSTS IN THE INDUSTRIAL ENGINEERING DEPARTMENT, MANY OF WHOM TESTIFIED THAT THEY CONSIDERED THAT THE NATURE OF THEIR WORK IS OR POTENTIALLY IS IN CONFLICT WITH THE WORK OF BARGAINING UNIT EMPLOYEES. THAT IS TO SAY, SOME TESTIFIED THAT THEIR WORK MIGHT HAVE THE EFFECT OF ELIMINATING JOBS OR CUTTING DOWN ON THE AMOUNT OF TIME TAKEN TO DO CERTAIN JOBS. SUCH A RESULT, IT WAS ARGUED, WAS BOUND TO BE OPPOSED BY THE PERSONS AFFECTED AND HENCE THE CONFLICT.

14. WE WOULD FIRST POINT OUT THAT IN THIS APPLICATION THE

BOARD IS CONCERNED NOT ONLY WITH BARGAINING UNIT EMPLOYEES BUT ALSO WITH ALL EMPLOYEES OF THE RESPONDENT REGARDLESS OF WHETHER OR NOT THEY ARE REPRESENTED BY A TRADE UNION. WITH REGARD TO THE SUBMISSION OF COUNSEL FOR THE RESPONDENT, AS OUTLINED IN THE ABOVE PARAGRAPH, WE WOULD SIMPLY STATE THAT WHERE A PERSON'S JOB FUNCTIONS ARE CLEARLY IDENTIFIED WITH THE INTERESTS OF MANAGEMENT AS OPPOSED TO RANK-AND-FILE EMPLOYEES, THIS IS ONE FACTOR WHICH MAY MAKE SUCH PERSON AN INTEGRAL PART OF MANAGEMENT.

15. THE SOLE QUESTION BEFORE THE BOARD IN THIS APPLICATION IS WHETHER OR NOT THE PERSONS IN DISPUTE ARE EMPLOYEES. IN ALL CASES, THE ISSUE BETWEEN THE PARTIES WAS WHETHER OR NOT THE PERSONS CONCERNED, ON THE DATE OF THE MAKING OF THE APPLICATION, EXERCISED MANAGERIAL FUNCTIONS OR WERE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT PROVIDES THAT NO PERSONS WHO, IN THE OPINION OF THE BOARD, FALL WITHIN EITHER OF THESE CATEGORIES SHALL BE DEEMED TO BE EMPLOYEES FOR PURPOSES OF THE ACT. THE BOARD APPLYING THE CRITERIA SET OUT IN EARLIER DECISIONS AS WELL AS THOSE SPECIFICALLY REFERRED TO IN THIS DECISION HAS MADE THE DETERMINATIONS REQUIRED OF IT FOR ALL OF THE PERSONS IN DISPUTE. WE WOULD MENTION THAT IN MAKING DETERMINATIONS WE HAVE TAKEN INTO ACCOUNT THE RELEVANT PORTIONS OF THE PAPER OF G. W. REED, Q.C., ENTITLED WHITE-COLLAR BARGAINING UNITS UNDER THE ONTARIO LABOUR RELATIONS ACT PUBLISHED IN 1969 BY THE INDUSTRIAL RELATIONS CENTRE, QUEEN'S UNIVERSITY (RESEARCH SERIES: NO. 8) AND MANY OF THE DECISIONS CITED THEREIN. WE HAVE ALSO CONSIDERED DECISION OF THE BOARD ISSUED SINCE THE PUBLICATION OF THE ABOVE PAPER, NAMELY, THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE, OLRB M.R. AUGUST 1969, P. 669; AJAX AND PICKERING GENERAL HOSPITAL CASE, FEBRUARY 19, 1970, BOARD FILE NO. 15917-68-R. AS WELL, WE HAVE LOOKED AT THE CRITERIA USED BY THE NATIONAL LABOUR RELATIONS BOARD IN A NUMBER OF CASES IN DETERMINING WHAT CONSTITUTES MANAGERIAL AUTHORITY AND CONFIDENTIALITY IN MATTERS RELATING TO LABOUR RELATIONS.

16. THE BOARD HAS MADE ITS DETERMINATION ON THE BASIS OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AS IT RELATES TO EACH OF THE INDIVIDUALS IN DISPUTE. WE FOUND, HOWEVER, THAT THE EVIDENCE OF PERSONS WITH IDENTICAL JOB TITLES, IN SOME INSTANCES, WAS SUFFICIENTLY DIFFERENT AS TO CAUSE US TO FIND THAT SOME PERSONS IN THE SAME JOB CLASSIFICATION WERE EMPLOYEES AND SOME PERFORMED "MANAGERIAL" OR "CONFIDENTIAL" RESPONSIBILITIES. FURTHER, IN OTHER INSTANCES, WE FOUND THAT PERSONS WHO BY THEIR JOB TITLES WOULD APPEAR TO BE IN A LOWER POSITION IN THE RESPONDENT'S ORGANIZATION THAN OTHER PERSONS IN DISPUTE, ON THE

EVIDENCE, FELL WITHIN THE "MANAGERIAL" OR "CONFIDENTIAL" CATEGORY, WHEREAS WE FOUND OTHER PERSONS WHO BY JOB TITLE, IN ANY EVENT, WOULD APPEAR TO BE IN HIGHER JOB CLASSIFICATIONS TO BE EMPLOYEES FOR PURPOSES OF THE ACT. THIS EXPLAINS WHAT OTHERWISE MIGHT APPEAR TO BE INCONSISTENCIES IN OUR FINDINGS.

17. ASSUMING FOR PURPOSES OF ARGUMENT ONLY THAT WE WERE CALLED UPON IN THIS APPLICATION TO DETERMINE WHETHER THE PERSONS IN DISPUTE WERE APPROPRIATE FOR INCLUSION IN A BARGAINING UNIT, (ASSUMING THEY ALL WERE EMPLOYEES) IT MAY WELL BE THAT NOTWITHSTANDING DIFFERENCES IN THE EVIDENCE OF PERSONS IN THE SAME JOB CLASSIFICATION WE WOULD FIND ALL OF THEM APPROPRIATE FOR INCLUSION IN OR EXCLUSION FROM A BARGAINING UNIT. FOR EXAMPLE, IT MAY BE THAT WE WOULD FIND ALL ANALYSTS IN THE INDUSTRIAL ENGINEERING DEPARTMENT, REGARDLESS OF THEIR PARTICULAR FUNCTION, WERE APPROPRIATE FOR INCLUSION IN A UNIT BY THEMSELVES OR TOGETHER WITH OTHER CLASSIFICATIONS OF EMPLOYEES. WE WOULD STRESS, HOWEVER, THAT IN THIS APPLICATION OUR DETERMINATIONS WITH RESPECT TO THE PERSONS IN DISPUTE HAVE NOTHING TO DO WITH THEIR APPROPRIATENESS FOR INCLUSION IN OR EXCLUSION FROM ANY BARGAINING UNIT.

18. HAVING REGARD TO ALL OF THE FOREGOING, THE BOARD FINDS THAT THE FOLLOWING PERSONS DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT:

LELIA I. MCCONNELL	-	RECEPTIONIST AND IN CHARGE OF MAIL
J. H. GRANT	-	SENIOR SYSTEMS ANALYST
R. J. COTE	-	SENIOR SYSTEMS ANALYST
D. J. HARRISON	-	SENIOR SYSTEMS ANALYST
M. P. SAYRES	-	SUPERVISOR OF TYPING
F. G. GRISWOLD	-	JUNIOR SYSTEMS ANALYST
K. J. MURPHY	-	SYSTEMS ANALYST
K. LAHER	-	JUNIOR SYSTEMS ANALYST
D. R. BLAIR	-	SYSTEMS ANALYST
J. W. RANGER	-	ANALYST
A. G. COMFORT	-	ANALYST
R. J. HENDERSON	-	MAINTENANCE STANDARDS ANALYST
J. L. LARUE	-	MAINTENANCE STANDARDS ANALYST
C. EVANOVITCH	-	MAINTENANCE STANDARDS ANALYST
M. A. PICCOLO	-	MAINTENANCE STANDARDS ANALYST
A. E. PAQUETTE	-	MAINTENANCE STANDARDS ANALYST
R. MACLEOD	-	MAINTENANCE STANDARDS ANALYST
C. VAN AMELSVOORT	-	MAINTENANCE STANDARDS ANALYST
N. A. PALMGREN	-	MAINTENANCE STANDARDS ANALYST

G. S. Simpson	-	Engineering Assistant
G. E. Kelly	-	Supervisor - Steel Distributing
J. E. Tremblay	-	Supervisor of Inventory Control
R. H. McLean	-	Production Planning (Special Assignment)
D. W. McDonald	-	Manufacturers Coordinator
W. S. Okninanski	-	Office Equipment Analyst
W. E. Kelly	-	Junior System Analyst
J. E. Tuckett	-	Junior System Analyst
R. D. Marrett	-	Junior System Analyst
F. L. Davey	-	Junior System Analyst
H. F. Myers	-	Junior Systems Analyst
W. E. Dixon	-	Office Supervisor Records
M. G. Danby	-	Assistant Supervisor - Central Billing
G. B. Leathwood	-	Maintenance Technologist - Bar and Strip Mill
L. V. Nott	-	Maintenance Technologist
C. L. Edwardson	-	Maintenance Planner
Peter Bier	-	Maintenance Planner
E. Maki	-	Maintenance Planner
W. I. Harris	-	Maintenance Planner
G. H. Lobban	-	Maintenance Planner
J. M. Lauzon	-	Supervisor of Planning and Scheduling-Transportation Dept.
W. R. Willis	-	Maintenance Planner - Crane Repair
C. R. Starling	-	Maintenance Planner - Automotive Repair
W. H. Diotte	-	Maintenance Planner and Scheduler - Ironworkers
H. J. Gaines	-	Maintenance Planner - Coke Plant
D. H. Roy	-	Supervisor of Primary Mills
A. J. St. Louis	-	Master Scheduler
G. S. Freschette	-	Supervisor of Hot Mill Scheduling
G. W. Mills	-	Assistant Supervisor of Production Planning
H. A. Zeppa	-	Line Man
Henry Viita	-	Instrument Man
W. J. Moss	-	Senior Shop Scheduler
John Morley	-	Foundry Practice Man
P. B. Prokopenuc	-	Foundry Practice Man
S. E. Peplow	-	Planner - Estimator
R. B. Longstreet	-	Estimator
A. P. Carbone	-	Estimator
H. Lapointe	-	Estimator
W. W. Evans	-	Estimator
J. M. Kustura	-	Cost and Performance Analyst
D. W. Taylor	-	Maintenance Technologist
Tom J. Majic	-	Maintenance Technician

R. G. Taylor	-	Senior Maintenance Technician
J. J. Kostenuik	-	Maintenance Technician
C. W. Wyant	-	Assistant Supervisor
F. A. Simon	-	Assistant Supervisor - Providing
J. E. Springgay	-	Supervisor of Scheduling and Shipping in Production Planning
M. Vetero	-	Maintenance Planner
G. H. Makila	-	Planner
P. W. Antoniow	-	Maintenance Planner
J. A. Wilson	-	Planner
W. Mahler	-	Assistant Planner
J. N. Wright	-	Electrical Technologist
M. Jack Dacey	-	Electrical Technician
J. H. Mihell	-	Assistant Chemist
G. R. Sagle	-	Assistant Maintenance Planner
D. McLeod	-	Print Librarian

19. The Board further finds that the following persons exercise managerial functions or are employed in a confidential capacity in matters relating to labour relations within the meaning of section 1(3)(b) of The Labour Relations Act and are not employees of the respondent for the purposes of the Act:

C. J. McAndrew	-	Supervisor of Movement Services
J. R. Williams	-	Supervisor of Rates
Barbara A. Bowser	-	Secretary - Travel Agent
J. H. Martens	-	Freight Tariff Analyst
A. J. Cooper	-	Clerk to Vice President of Operations
F. K. Winslow	-	Safety Analyst
Vern Ferris	-	Safety Analyst
Wilfred E. Hytonen	-	Senior Systems Analyst
J. M. Martan	-	Senior Systems Analyst
W. J. Bampton	-	Chief Attendance Record Clerk
D. G. Hugill	-	Supervisor of Service Costing and Accounts Payable
J. R. Roski	-	Supervisor of Inventory Costing
J. C. Baker	-	Senior Systems Analyst
A. T. Charette	-	Supervisor of Product Coasting
I. M. Munroe	-	Senior Systems Analyst
W. S. Farmer	-	Senior Operations Analyst
A. D. Elliot	-	Supervisor of Planning Control
D. A. MacLeod	-	Analyst
J. W. Murphy	-	Analyst
Harry L. Wynne	-	Senior Operations Analyst
R. L. Bringleson	-	Senior Operations Analyst
R. W. Jollineau	-	Industrial Engineering Analyst
W. A. Wasliniuk	-	Maintenance Standard Analyst

D. C. Bracking	-	Computer Analyst
B. E. Pearce	-	Junior Analyst
B. J. Rollins	-	Typist - Clerk
E. R. McKay	-	Typist - Clerk
D. R. Gray	-	Junior Analyst
G. A. Hayes	-	Junior Analyst
J. W. Routledge	-	Office Supervisor Records
W. S. Leask	-	Recording Analyst
W. D. Lee	-	Office Supervisor - Bar Strip and Cold Mill
R. Healey	-	Assistant Supervisor - Central Billing
V. M. Grunt	-	Junior Analyst

20. The application is withdrawn by leave of the Board with respect to the following persons:

J. D. Rickaby	J. A. Wilshere	M. P. Novick
G. H. Lewis	J. A. Piper	I. D. Vipond
W. Riebell	O. A. Bodley	I. S. McMillan
G. C. Hess	H. R. Riacconi	M. A. Gerhart
W. Lukenda	W. A. Fraser	R. A. Burns
E. W. Read	J. A. Walker	D. J. Cameron
R. N. Remillard	L. E. Kartio	J. D. Clements
R. E. Masters	B. M. Mulholland	E. C. Richards
W. J. Adolph	H. G. Lapointe	T. D. Marwood
O. E. Kallionarvi	C. F. Allen	O. Delfgou
J. T. Piraino	R. F. Davies	P. I. Edelgaard
J. Hamilton	E. B. McMillan	D. E. Gibson
W. A. Hugill	T. P. Scheifkle	R. M. Bell
K. J. Smith	A. H. Laine	R. D. Southerland
E. A. Gulyas	B. J. McLean	H. C. Lutes
D. B. Kasubeck	I. B. Bergsson	A. J. Thompson
H. P. Kierans		

INDEXED ENDORSEMENT - SECTION 79A

17870-70-M: ITT CANADA LIMITED (Employer) v. United Steelworkers of America and its Local Union No. 6340 (Trade Union).

BEFORE: J. D. O'Shea, Q.C., Vice-Chairman, and Board Members O. Hodges and H. F. Irwin.

APPEARANCES AT THE HEARING: B. H. Stewart, G. Dalgard and J. Ludtke for the employer, Ian Scott, Ben Desroches and G. O. Reeds for the trade union, R. Russell for United Electrical, Radio and Machine Workers of America (UE).

DECISION OF THE BOARD: June 16, 1970.

. . .

2. The Minister has referred to the Ontario Labour Relations Board, pursuant to the provisions of section 79a of The Labour Relations Act, the question as to whether the Minister has the authority under the Act to appoint a conciliation officer at the request of the trade union (hereinafter referred to as Local 6340) in this matter.

3. The evidence established that Local 6340 was a party to a collective agreement with General Controls Co. (Canadian) Ltd. for all its employees at Guelph with certain exceptions not here relevant. This collective agreement was to expire on May 19, 1971. ITT Canada Limited amalgamated with General Controls Co. (Canadian) Ltd. on December 31, 1969 and from that date ITT Canada Limited intermingled its employees with the employees who were formerly employed by General Controls Co. (Canadian) Ltd. at Guelph.

4. United Electrical, Radio and Machine Workers of America (UE) had been certified for all employees of ITT Canada Limited on March 19, 1969, and following negotiations for a collective agreement, the employees of ITT Canada Limited represented by the UE engaged in a strike commencing December 15, 1969. The employees represented by the UE picketed the premises of ITT Canada Limited until some time in February 1970, at which time the picketing ceased.

5. There was no evidence of any activity on the part of the UE to assert its bargaining rights between February 1969 and March 12, 1970, the date Local 6340 served a notice to bargain on ITT Canada Limited, pursuant to the provisions of section 47a of the Act, and indeed there was no evidence that the UE asserted its bargaining rights between that date and the date of the hearing in this matter.

6. Local 6340 argued that the Board should declare that the UE had abandoned its bargaining rights in view of the fact that the strike engaged in by the UE was apparently unsuccessful.

7. Having regard to all the evidence and the fact that less than one year has elapsed between the date the UE was certified and the date Local 6340 served notice to bargain on ITT Canada Limited, pursuant to the provisions of section 47a of the Act, and the fact that only a short time has elapsed

SINCE THE END OF THE PICKETING OF THE EMPLOYER'S PREMISES AND THE DATE OF THE HEARING IN THIS MATTER, AND ALSO THE FACT THAT THE UE WAS REPRESENTED AND PARTICIPATED AT THE HEARING IN THESE PROCEEDINGS, THE BOARD IS NOT PREPARED TO FIND THAT THE UE HAS ABANDONED ITS BARGAINING RIGHTS IN THIS MATTER.

8. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT GENERAL CONTROLS CO. (CANADIAN) LTD. HAS SOLD, WITHIN THE MEANING OF SECTION 47A(1), THE BUSINESS FORMERLY CARRIED ON BY IT AT GUELPH TO ITT CANADA LIMITED. SUBSEQUENTLY, ITT CANADA LIMITED INTERMINGLED, WITHIN THE MEANING OF SECTION 47A(5), ITS EMPLOYEES WITH THE EMPLOYEES FORMERLY EMPLOYED BY GENERAL CONTROLS CO. (CANADIAN) LTD. AT GUELPH WHO WERE REPRESENTED BY LOCAL 6340. AS STATED ABOVE, THE UE WERE ENTITLED TO REPRESENT SOME OF THE EMPLOYEES WHO WERE INTERMINGLED BY VIRTUE OF THE BOARD'S CERTIFICATE DATED MARCH 19, 1969.

9. THE BOARD FINDS IN ALL THE CIRCUMSTANCES OF THIS CASE THAT THE INTERMINGLED EMPLOYEES AT GUELPH CONSTITUTE ONE APPROPRIATE BARGAINING UNIT.

10. HAVING REGARD TO THE REPRESENTATION OF THE PARTIES, THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYEES OF ITT CANADA LIMITED AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SECURITY GUARDS, AND PERSONS ENGAGED ON A COOPERATIVE TRAINING BASIS WITH A UNIVERSITY OR COLLEGE, CONSTITUTE A UNIT OF EMPLOYEES OF ITT CANADA LIMITED APPROPRIATE FOR COLLECTIVE BARGAINING.

11. PURSUANT TO THE PROVISIONS OF SECTIONS 79A(2) AND 47A(7) AND FOR THE PURPOSES OF DETERMINING WHICH TRADE UNION SHALL BE THE BARGAINING AGENT OF THE EMPLOYEES IN THE BARGAINING UNIT, THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF ITT CANADA LIMITED IN THE BARGAINING UNIT.

12. ALL EMPLOYEES OF ITT CANADA LIMITED IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

13. VOTERS WILL BE GIVEN A CHOICE BETWEEN UNITED STEELWORKERS OF AMERICA AND ITS LOCAL UNION NO. 6340 AND UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE).

14. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

14709-68-R: Labourers' International Union of North America, Local 183 (Applicant) v. KNIGHT SECURITY GUARDS LIMITED (Respondent)

BEFORE: J. D. O'Shea, Q.C., Vice-Chairman, and Board Members O. Hodges and H. F. Irwin.

APPEARANCES AT THE HEARING: Raymond Koskie and M. J. Reilly for the applicant, B. H. Stewart for the respondent.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN: June 10, 1970.

1. The applicant, by letters dated May 5th and May 8th, 1969, has again requested the Board to reconsider its decision of September 17th, 1968 in this matter. The Board, by its decision dated October 7th, 1968, denied the applicant's first request for reconsideration for the reasons set out therein.

2. The Board, in its decision of July 2nd, 1969, postponed consideration of the applicant's request for reconsideration pending a final decision by the Courts in the case of Hotel and Restaurant Employees and Bartenders International Union A.F.L. - C.I.O. - C.L.C. Local 197 and Nick Masney Hotels Limited. In that case, the decision of Addy, J. raised certain procedural questions which might have had a bearing on the applicant's request for reconsideration in this matter if his statements properly expressed the law of Ontario. However, the Court of Appeal set aside the decision of Addy, J. and the Board is therefore in a position to deal with the applicant's request for reconsideration in this case and accordingly this matter came on for hearing on May 27th, 1970.

3. Following the Board's decision of October 7th, 1968, the applicant brought a certiorari motion in the Supreme Court of Ontario for an order removing into that Court and quashing the Board's decision of September 17th, 1968. The decision of Osler, J. on that motion reads in part as follows:

> Assuming I had the power to do so, I would not be inclined to find the Board in error because of its interpretation. While I might myself have inclined to the view that it would be more consistent with the Section as a whole and with its legislative

> HISTORY TO FIND THAT THE DISQUALIFICATIONS IT SETS UP APPLY ONLY TO GUARDS EMPLOYED TO PROTECT THE PROPERTY OF THEIR OWN EMPLOYER, THE INTERPRETATION PLACED UPON THE SECTION BY THE BOARD CANNOT BE SAID TO BE AN IRRATIONAL ONE. REGARDLESS OF THE QUESTION OF THE POWER TO REVIEW, EVEN WHERE SUCH A POWER EXISTS THE CONSIDERED OPINIONS OF A SPECIALIST TRIBUNAL ON MATTERS INCLUDED WITHIN THEIR SPECIALTY ARE ENTITLED TO GREAT WEIGHT AND SHOULD NOT, IN MY RESPECTFUL OPINION, BE SET ASIDE SIMPLY BECAUSE THEY ARE AT VARIANCE WITH THE OPINION OF THE COURT. HAD I THE POWER TO DO SO, THEREFORE, I WOULD NOT INTERFERE WITH THE BOARD'S DECISION ON THAT GROUND AND WOULD DISMISS THE APPLICATION.
>
> HOWEVER, IN THE VIEW I TAKE OF THE MATTER, THE DECISION OF THE BOARD, ERRONEOUS OR NOT, IS NOT REVIEWABLE BY THIS COURT AS IT IS ON A MATTER WHICH FALLS CLEARLY WITHIN THE EXCLUSIVE JURISDICTION CONFERRED UPON THE BOARD BY THE STATUTE. THERE IS NOW A PLETHORA OF CASES IN WHICH THE JURISDICTION OF BOARDS SIMILAR TO THE LABOUR RELATION BOARD IS DISCUSSED AND NO PURPOSE CAN NOW BE SERVED BY A LENGTHY REVIEW, IN VIEW OF THE DECISION OF FRASER, J. IN REGINA V. O.L.R.B. EX PARTE METROPOLITAN LIFE INSURANCE COMPANY [1968] 2 O.R. 37, UPHELD BY THE COURT OF APPEAL IN A DECISION RELEASED NOVEMBER 27TH, 1968, AS YET UNREPORTED.

4. THE APPLICANT APPEALED THE DECISION OF OSLER, J. TO THE COURT OF APPEAL OF ONTARIO. THE APPEAL WAS HEARD ON APRIL 15TH, 1969, AND THE DECISION OF LASKIN, J.A. ON BEHALF OF THE COURT OF APPEAL READS IN PART AS FOLLOWS:

> THE BOARD CONSTRUED THIS DECISION TO MEAN THAT A TRADE UNION IS NOT QUALIFIED TO REPRESENT PERSONS ENGAGED AS SECURITY GUARDS, WHETHER FOR THEIR OWN EMPLOYER OR FOR OTHERS THROUGH CONTRACTS WITH THEIR OWN EMPLOYER, IF THE TRADE UNION IS NOT WHAT, FOR CONVENIENCE, I MAY CALL A "SECURITY GUARDS" UNION.
>
> WE THINK THAT THIS CONSTRUCTION, VIEWED ESPECIALLY AGAINST THE HISTORY OF THE PROVISION, OVERPLAYS ITS PURPOSE, WHICH IS TO LIMIT REPRESENTATION OF SECURITY GUARDS, EMPLOYED AS SUCH TO PROTECT THE PROPERTY OF THEIR EMPLOYER, TO AN INDEPENDENT AND UNAFFILIATED UNION EMBRACING NO OTHER CATEGORY OF

> MEMBERS. SECTION 9 IS READ TOO WIDELY IF IT IS CONSTRUED TO EMBRACE THE FACTUAL SITUATION PRESENTED HERE.
>
> ALTHOUGH WE DO NOT ADOPT THE INTERPRETATION PLACE UPON SECTION 9 BY THE BOARD, WE ARE OF THE OPINION THAT ITS STATUTORY POWERS EXTEND TO THE CONSTRUCTION OF PROVISIONS SUCH AS SECTION 9 AND TO THE APPLICATION OF THOSE PROVISIONS AS CONSTRUED, AS BEING INTEGRAL TO THE ISSUES CONFIDED TO ITS JURISDICTION. IN VIEW OF THE PRECLUSIVE EFFECT OF SECTIONS 79 AND 80 OF THE LABOUR RELATIONS ACT, THE BOARD'S DECISION ALTHOUGH BASED ON A CONSTRUCTION WHICH IS UNACCEPTABLE TO THIS COURT, IS NOT REVIEWABLE.

5. IN ITS LATEST REQUEST FOR RECONSIDERATION, THE APPLICANT REQUESTS "THAT THIS MATTER BE HEARD BY A PANEL OF THE BOARD WHICH WAS NOT HITHERTO INVOLVED IN THESE CASES. WE ALSO RESPECTFULLY SUGGEST THAT A FIVE MEMBER BOARD PRESIDED OVER BY THE CHAIRMAN OR ALTERNATE CHAIRMAN BE APPOINTED TO ENTERTAIN OUR REQUEST FOR RECONSIDERATION."

6. IN SUPPORT OF ITS REQUEST CONCERNING THE MANNER IN WHICH THE BOARD SHOULD BE CONSTITUTED TO REVIEW ITS DECISION IN THIS MATTER, THE APPLICANT SUBMITS THAT "IN THE INTERESTS OF THE BOARD, THE PARTIES AND THE GENERAL PUBLIC AND TO INSURE THAT JUSTICE APPEARS TO BE DONE, WE HAVE RECOMMENDED THAT THE SAME PANEL OF THE BOARD SHOULD NOT BE CALLED UPON TO DECIDE ON THE PROPRIETY OF ITS OWN DECISION. THIS, IN OUR VIEW, IS CONSISTENT WITH THE PRINCIPLES OF NATURAL JUSTICE."

7. THE APPLICANT FURTHER SUBMITS THAT ". . . IN VIEW OF THE OPINION EXPRESSED BY THE FOUR JUDGES, THERE IS CERTAINLY REASON TO GRAVELY DOUBT THE CORRECTNESS OF THE BOARD'S DECISION AND IN PARTICULAR ITS INTERPRETATION OF SECTION 9. IN OUR RESPECTFUL SUBMISSION, THE BOARD IS CLEARLY IN ERROR. WHEN AN ADMINISTRATIVE TRIBUNAL SUCH AS THE BOARD IS GIVEN EXCLUSIVE JURISDICTION TO DETERMINE ALL QUESTIONS OF FACT OR LAW THAT MAY ARISE IN ANY MATTER BEFORE IT AND ALSO IS GIVEN THE PROTECTION OF A WIDE PRIVATIVE CLAUSE, IT OUGHT NOT REFUSE TO RECONSIDER ITS DECISION IN CIRCUMSTANCES SUCH AS THESE, ESPECIALLY WHEN DOUBT HAS BEEN CAST UPON IT BY A SUPERIOR COURT. THERE ARE, OF COURSE, NO FACTS IN DISPUTE. THE MAIN ISSUE IS ONE OF THE PROPER LEGAL INTERPRETATION TO BE GIVEN TO SECTION 9. A REFUSAL BY THE BOARD TO DEAL WITH THE MATTER AT THIS STAGE WOULD, IN OUR RESPECTFUL SUBMISSION, BE TANTAMOUNT TO IGNORING THE CONSIDERED OPINION OF THE COURTS ON THIS MATTER, AS WELL AS IGNORING ANY ASSISTANCE OR

ARGUMENT QUESTIONING ITS DECISION. . . ."

8. DEALING INITIALLY WITH THE APPLICANT'S REQUEST CONCERNING THE MANNER IN WHICH THE BOARD SHOULD BE CONSTITUTED, WE ARE OF THE VIEW THAT THE LABOUR RELATIONS ACT DOES NOT EMPOWER THE BOARD TO DO WHAT THE APPLICANT SUGGESTS. THE DIVISION OF THE BOARD WHICH HEARD THIS APPLICATION WAS CONSTITUTED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 75(6) OF THE ACT. IN ACCORDANCE WITH THE PROVISIONS OF SECTION 75(8) OF THE ACT, THE DECISION OF THE MAJORITY IN THIS MATTER "IS THE DECISION OF THE BOARD".

9. THE DECISION DATED SEPTEMBER 17TH, 1968 IS NOT MERELY THE DECISION OF A DIVISION OF THE BOARD WHICH HEARD THE CASE BUT IS, IN FACT, THE DECISION OF THE BOARD. IT IS TRITE TO SAY THAT THE JURISDICTION CONFERRED BY SECTION 79(1) OF THE ACT, WHEREUNDER THE BOARD MAY RECONSIDER ANY DECISION, MUST BE EXERCISED BY THE DIVISION WHICH IS SEIZED OF THE MATTER. THE VERY ACT OF RECONSIDERATION CONTEMPLATES THAT THE MATTER WILL BE CONSIDERED AGAIN BY THE DIVISION WHICH CONSIDERED THE MATTER THE FIRST TIME. IF SECTION 79(1) CONTEMPLATED THAT A DECISION OF ONE DIVISION COULD BE REVIEWED BY ANOTHER DIVISION OF THE BOARD, THE ACT WOULD HAVE PROVIDED FOR REVIEW RATHER THAN RECONSIDERATION.

10. THE BOARD HAS NEVER ADOPTED THE PRACTICE OF HAVING ONE DIVISION OF THE BOARD TO SIT IN APPEAL ON DECISIONS OF ANOTHER DIVISION. IN OUR VIEW, THE ACT IS NOT BROAD ENOUGH TO PERMIT THE BOARD TO SET UP AN APPELLATE DIVISION IN THE MANNER SUGGESTED BY THE APPLICANT IN THIS CASE.

11. THE NEXT MATTER TO BE DEALT WITH IS THE APPLICANT'S RENEWED REQUEST THAT WE RECONSIDER OUR DECISION IN THE LIGHT OF THE COMMENTS MADE BY THE COURTS.

12. SECTION 80 OF THE ACT READS AS FOLLOWS:

> NO DECISION, ORDER, DIRECTION, DECLARATION OR RULING OF THE BOARD SHALL BE QUESTIONED OR REVIEWED IN ANY COURT, AND NO ORDER SHALL BE MADE OR PROCESS ENTERED, OR PROCEEDINGS TAKEN IN ANY COURT, WHETHER BY WAY OF INJUNCTION, DECLARATORY JUDGMENT, CERTIORARI, MANDAMUS, PROHIBITION, QUO WARRANTO, OR OTHERWISE, TO QUESTION, REVIEW, PROHIBIT OR RESTRAIN THE BOARD OR ANY OF ITS PROCEEDINGS.

13. THE COURT OF APPEAL HAS FOUND THAT IT HAS NO JURISDICTION IN VIEW OF THE PRECLUSIVE EFFECT OF SECTION 80 TO "REVIEW" THE

BOARD'S DECISION. SINCE SECTION 80 ALSO PRECLUDES THE COURT FROM "QUESTIONING" BY THE BOARD'S DECISION, IF SECTION 80 IS BINDING UPON THE COURTS, BY NECESSARY IMPLICATION THE COURTS MUST ALSO HAVE FOUND BY THE SAME PRECLUSIVE EFFECT OF SECTION 80 THAT THEY HAVE NO JURISDICTION TO "QUESTION" THE BOARD'S DECISION.

14. THIS BOARD, BEING A CREATURE OF THE STATUTE, RECEIVES ITS JURISDICTION FROM THE ACT AND MUST EXERCISE ITS JURISDICTION SUBJECT TO THE STRICTURES OF THE ACT. WHILE THE TRIAL DIVISION AND THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO ARE COURTS OF SUPERIOR JURISDICTION, THEY ARE SUCH ONLY IN MATTERS FALLING WITHIN THEIR COMPETENCE. SECTION 79(1) OF THE ACT PROVIDES THAT "THE BOARD HAS EXCLUSIVE JURISDICTION TO EXERCISE THE POWERS CONFERRED UPON IT BY OR UNDER THIS ACT AND TO DETERMINE ALL QUESTIONS OF FACT OR LAW THAT ARISE IN ANY MATTER BEFORE IT, AND THE ACTION OR DECISION OF THE BOARD THEREON IS FINAL AND CONCLUSIVE FOR ALL PURPOSES. . . ." THIS BOARD HAS BEEN GIVEN EXCLUSIVE JURISDICTION WITH RESPECT TO THE POWERS CONFERRED ON IT. ACCORDINGLY, THE BOARD HAS SOLE RESPONSIBILITY IN MATTERS FALLING WITHIN ITS COMPETENCE, SUBJECT ONLY TO THE LIMITED AREAS WHERE THE COURTS HAVE EXERCISED A POWER OF REVIEW, E.G., WHERE THE BOARD HAS FAILED TO EXERCISE ITS JURISDICTION OR EXCEEDS ITS JURISDICTION.

15. AS CAN BE SEEN FROM THE ABOVE, THE COURTS HAVE NOT FOUND THAT THE BOARD HAS WRONGFULLY EXERCISED ITS JURISDICTION WHICH WOULD ENTITLE THE COURTS TO REVIEW THE BOARD'S DECISIONS IN THIS CASE. THE BOARD DOES NOT DEEM IT ADVISABLE TO CONSIDER THE COURT'S REMARKS TO BE JUDICIAL DIRECTIONS IN THE INSTANT CASE. IF THE BOARD WERE TO DECIDE OTHERWISE, THE BOARD WOULD BE ACTING CONTRARY TO THE SPIRIT AND INTENT OF SECTION 80 BY CONFERRING JURISDICTION ON THE COURTS WHICH SECTION 80 CLEARLY PROHIBITS. IN ADDITION, TO DO SO MIGHT PLACE THE BOARD IN THE POSITION OF ATTACHING SIGNIFICANCE TO THE COURTS' REMARKS, WHICH THE COURTS DID NOT INTEND.

16. IF THE BOARD WERE TO ACCEDE TO THE APPLICANT'S REQUEST THE BOARD WOULD THEREBY GIVE TO THE PARTIES INDIRECTLY A RIGHT OF APPEAL TO OR REVIEW BY THE COURTS WHICH IS PROHIBITED BY SECTION 80. SINCE THE ACT EXPRESSLY PROHIBITS REVIEW BY THE COURTS, THE BOARD OUGHT NOT TO CIRCUMVENT THE SPIRIT AND INTENT OF SECTION 79(1) AND SECTION 80 OF THE ACT BY COOPERATING WITH A PARTY IN ORDER TO ENABLE THAT PARTY TO DO INDIRECTLY WHAT THE PARTY IS PROHIBITED FROM DOING DIRECTLY.

17. THERE IS NO DOUBT THAT THE REASONED DECISIONS OF THE COURTS WITH RESPECT TO MATTERS WITHIN THEIR JURISDICTION, EVEN

WHEN EXPRESSED OBITER DICTA, ARE OF GREAT VALUE IN CASES BEFORE THE BOARD. HOWEVER, SUCH DECISIONS ARE READILY DISTINGUISHABLE FROM THE USE TO WHICH THE APPLICANT HAS REQUESTED THE BOARD TO MAKE OF THE OPINIONS EXPRESSED BY THE COURTS IN THIS CASE.

18. THE APPLICANT HAS, BY THE BOARD'S DECISION OF OCTOBER 7TH, 1968, RECEIVED CONSIDERATION WITH RESPECT TO ITS FIRST REQUEST FOR RECONSIDERATION. AT THE HEARING ON MAY 27TH, 1970, THE APPLICANT ATTEMPTED TO BOLSTER THE ARGUMENTS WHICH IT MADE AT THE FIRST HEARING AND ON ITS FIRST REQUEST FOR RECONSIDERATION. HOWEVER, THE COURTS HAVE FOUND THAT THE BOARD HAS PROPERLY EXERCISED ITS JURISDICTION UNDER THE ACT IN ARRIVING AT OUR EARLIER DECISIONS IN THIS MATTER. ALTHOUGH THE APPLICANT'S CASE WAS VERY ABLY AND FORCIBLY ARGUED AT THE HEARING ON MAY 27TH, WE ARE UNABLE TO FIND ANY COMPELLING REASON TO CAUSE US TO VARY OR REVOKE OUR DECISIONS IN THIS MATTER ESPECIALLY IN VIEW OF THE PROVISIONS OF SECTIONS 79(1) AND 80 OF THE ACT.

19. FOR THE ABOVE REASONS, THE BOARD DOES NOT DEEM IT ADVISABLE TO VARY OR REVOKE ITS DECISIONS OF SEPTEMBER 17TH, 1968 OR OCTOBER 7TH, 1968 IN THIS MATTER AND THE REQUESTS OF THE APPLICANT ARE ACCORDINGLY DENIED.

DECISION OF BOARD MEMBER O. HODGES: JUNE 10, 1970.

WITHOUT DEROGATING FROM MY DISSENT IN THIS MATTER, I CONCUR IN REJECTING THE APPLICANT'S APPEAL FOR RECONSIDERATION.

HOWEVER, IT IS APPARENT THAT MY REASONS FOR DISSENT HAVE BEEN STRENGTHENED BY THE OPINIONS EXPRESSED BY THE COURTS, AND THAT SECTION 9 COULD HAVE BEEN OTHERWISE INTERPRETED, I.E., THAT GUARDS WHO PROTECT PROPERTY OTHER THAN THAT OF THEIR EMPLOYER COULD BE FOUND TO BE EMPLOYEES WITHIN THE MEANING OF THE ACT.

17193-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 91, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. DON JONES LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

DECISION OF THE BOARD: JUNE 3, 1970.

1. The solicitors for the respondent, by letter dated May 21, 1970, advised the Board as follows:

> "On Wednesday, May 6th, 1970 we attended at the offices of the Respondent in Belleville for a hearing before the Examiner, Mr. S. G. Grizzle.
>
> After waiting approximately half an hour for the Union, after the appointed time for the commencement of the hearing, the Examiner called the Union office in Kingston and was told that the application had been withdrawn.
>
> As a result of the Applicant's failure to notify the Board of the withdrawal of the Application in proper time, the Respondent was put to substantial expense to prepare for the hearing and hereby requests that the Board amend its decision of May 8th by adding an award of costs in favour of the Respondent."

2. A copy of the foregoing was forwarded to the applicant. The latter advised the Board that an attempt had been made to have its Toronto office withdraw the application. However, no notice of withdrawal was received by the Board prior to May 6, 1970.

3. The applicant's letter was forwarded to the solicitors for the respondent who then advised that since neither the respondent, the Board or its Examiner had been notified of the withdrawal prior to May 6th, the respondent was repeating its request for costs.

4. The neglect of the applicant to give proper notice of its intent to seek withdrawal of the application resulted in unwarranted inconvenience and expense to the respondent and its solicitors, and also to the Board. We can well appreciate the respondent's feeling that it should not be made to suffer for the time and effort lost because of the conduct of the applicant.

5. It has not been the practice of the Board in the past, however, to award costs in matters arising before it and in view of this the request of the respondent is denied.

17298-69-R: Canadian Union of Construction Workers (Applicant) v. E. Del Medico Limited, trading under the firm name and style

OF GEM-CAMPBELL TERRAZZO TILE (RESPONDENT) v. LOCAL NO. 31 MARBLE MASONS, TILE SETTERS AND TERRAZZO MECHANICS AFFILIATED WITH THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA (INTERVENER #1) v. LOCAL NO. 56 - INTERNATIONAL ASSOCIATION OF MARBLE, SLATE AND STONE POLISHERS, RUBBERS AND SAWYERS, TILE AND MARBLE SETTERS HELPERS AND MARBLE MOSAIC AND TERRAZZO WORKERS HELPERS (INTERVENER #2) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JUNE 30, 1970.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

2. THE INSTANT APPLICATION IS MADE UNDER THE CONSTRUCTION INDUSTRY SECTIONS OF THE ACT. COUNSEL FOR THE APPLICANT ADVISED THE BOARD THAT THE APPLICANT HAS NOT ENTERED INTO ANY COLLECTIVE AGREEMENTS PERTAINING TO THE CONSTRUCTION INDUSTRY. FOR THE REASONS GIVEN IN THE SPEEDY TILE & CARPET CONTRACTORS CASE (BOARD FILE NO. 17307-69-R) THE BOARD FINDS THAT THE APPLICANT IS NOT A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO THE CONSTRUCTION INDUSTRY WITHIN THE MEANING OF SECTION 90(B) OF THE LABOUR RELATIONS ACT.

3. THE RESPONDENT IS ENGAGED IN THE BUSINESS OF LAYING BOTH TILE AND TERRAZZO. HAVING REGARD TO THE NATURE OF THE RESPONDENT'S OPERATIONS AND THE WORK PERFORMED BY THE PERSONS IN ITS EMPLOY, THE BOARD FINDS THAT ALL TILE SETTER AND TERRAZZO MECHANICS AND LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING. (SEE WINTER & SON CASE, OLRB M.R. FEBRUARY 1967, P. 889.)

4. FOR PURPOSES OF CLARITY, THE BOARD DECLARES THAT ALL PERSONS CLASSIFIED AS APPRENTICES, HELPERS AND GRINDERS FALL WITHIN THE CLASSIFICATION OF LABOURER.

5. COUNSEL FOR INTERVENER #2 WITHDREW THE ALLEGATION THAT THERE IS A COLLECTIVE AGREEMENT IN EFFECT BETWEEN LOCAL

No. 56 and the respondent covering the labourers in the employ of the company, which is a bar to the instant application. There is undisputed evidence, however, that the respondent and intervener #1 are parties to a collective agreement which was entered into by the parties on October 27, 1967. Counsel for intervener #1 and counsel for the respondent submit that the said collective agreement, which covers marble and tile setters and terrazzo mechanics, is a bar to the instant application.

6. Evidence was led by counsel for the respondent and counsel for intervener #1 on the issue as to when the collective agreement filed with the Board was entered into by the two parties. For this purpose Edward Del Medico, the president of the respondent, was called as a witness by counsel for intervener #1. Del Medico, as is indicated above, testified that the agreement was signed by himself on behalf of the company and by Danny DeMonte on behalf of Local No. 31 on October 27, 1967. Both Del Medico and DeMonte were subsequently called as witnesses by counsel for the applicant. DeMonte testified that to his recollection approximately 4 or 5 members of Local No. 31 were in the employ of the respondent as of October 27, 1967, the date the respondent and intervener #1 entered into the above referred to collective agreement. In reply to questions put to him by counsel for the applicant, Del Medico testified that he could not recollect how many persons he had in his employ as of October 27, 1967 or their classification. Del Medico admitted, however, that he had records which could provide this information but that he had not brought the said records with him. Counsel for the applicant requested that the Board require Del Medico to produce the said records or appoint an Examiner to examine the relevant records. This request was vigorously opposed by counsel for the respondent and counsel for intervener #1.

7. Del Medico, and for that matter Demonte, were both properly served with a subpoena by the applicant to appear at the Board hearing in this matter on May 4, 1970. The subpoena served upon Del Medico required that he bring with him and produce at the hearing inter alia all papers, letters, copies of letters, statements, receipts, records (financial or otherwise), relating to the relationship between the respondent and Local No. 31.

8. While Del Medico is the president of the respondent, because of that fact in itself, there was no obligation upon him to appear at the hearing on May 4, 1970. He was, however, compelled to attend the said hearing by virtue of the subpoena

DUCES TECUM SERVED UPON HIM BY THE APPLICANT. NO REASON WAS OFFERED BY DEL MEDICO FOR HIS FAILURE TO PRODUCE THE DOCUMENTS REQUIRED OF HIM UNDER THE SUBPOENA WHICH WE MIGHT ADD HE READILY ADMITTED WERE AVAILABLE. IN THESE CIRCUMSTANCES AND HAVING REGARD TO THE FACT THAT THE RECORDS, WHICH ARE SOLELY IN THE HANDS OF THE RESPONDENT, ARE MATERIAL TO THE APPLICANT'S CASE, THE BOARD PURSUANT TO THE POWERS VESTED IN IT BY SECTION 77 OF THE ACT, BY A DECISION DATED JUNE 17, 1970, APPOINTED D. K. AYNSLEY, EXAMINER, INTER ALIA, TO INQUIRE INTO AND REPORT TO THE BOARD ON THE NAMES AND CLASSIFICATIONS OF ALL OF THE EMPLOYEES OF THE RESPONDENT AS OF OCTOBER 27, 1967.

9. BY LETTER DATED JUNE 29, 1970, COUNSEL FOR THE RESPONDENT, FOR THE REASONS SET OUT IN HIS LETTER, REQUESTED THAT THE BOARD RECONSIDER ITS DECISION OF JUNE 17, 1970 APPOINTING AN EXAMINER TO INQUIRE INTO THE RESPONDENT'S RECORDS AS TO THE NAMES AND CLASSIFICATIONS OF ALL OF ITS EMPLOYEES AS OF OCTOBER 27, 1967. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF COUNSEL AND SEES NO REASON TO VARY OR REVOKE ITS DECISION. THE RESPONDENT, ACCORDINGLY, IS DIRECTED TO PROVIDE TO THE EXAMINER, FORTHWITH, THE ABOVE REFERRED TO RECORDS.

17692-70-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL #1988 (APPLICANT) v. CNIC CONSTRUCTION LTD. (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: T. G. HARKNESS AND RICHARD PROCTOR FOR THE APPLICANT AND CHARLES R. NICOL FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 10, 1970.

1. IN A DECISION DATED MAY 1, 1970, THE BOARD GRANTED A CERTIFICATE TO THE APPLICANT FOR A BARGAINING UNIT OF CARPENTERS AND CARPENTERS' APPRENTICES IN GEOGRAPHIC AREA NUMBER THIRTEEN ESTABLISHED BY THE BOARD. THE TERMINAL DATE FIXED FOR THE APPLICATION FOR CERTIFICATION WAS APRIL 30, 1970. THE RESPONDENT SENT A REPLY MAILED BY REGISTERED MAIL ON MAY 4, 1970, CONSISTING OF THE FIRST PAGE OF FORM 54, REPLY TO APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY, AND A LIST OF EMPLOYEES WHICH WERE RECEIVED BY THE BOARD ON MAY 5, 1970. IN A LETTER FROM COUNSEL FOR THE RESPONDENT, RECEIVED BY THE BOARD ON MAY 6, A REQUEST WAS MADE FOR THE BOARD TO RECONSIDER AND RE-OPEN THIS APPLICATION FOR CERTIFICATION IN ORDER TO ALLOW THE RESPONDENT TO FILE A REPLY.

THE BOARD DIRECTED A HEARING IN THIS MATTER, WHICH WAS HELD ON JUNE 5, 1970.

2. AT THE HEARING THE PRESIDENT OF THE RESPONDENT ADMITTED THAT HE HAD RECEIVED FROM THE BOARD ON APRIL 27, 1970, A COPY OF FORM 49, APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY; FORM 51, NOTICE OF APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY; FORM 52, NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY, TOGETHER WITH COPIES OF THE APPROPRIATE FORMS ON WHICH TO FILE A REPLY. THE PRESIDENT ALSO INFORMED THE BOARD THAT ON APRIL 28, 1970, HE POSTED THE FORM 52, NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY. UNDER SECTION 69 OF THE BOARD'S RULES OF PROCEDURE, A RESPONDENT IS REQUIRED TO FILE ITS REPLY NOT LATER THAN THE TERMINAL DATE FOR THE APPLICATION. A REPLY MAILED BY REGISTERED MAIL ON THE TERMINAL DATE IS TREATED AS HAVING BEEN FILED ON THE TERMINAL DATE (SEE SECTION 50 OF THE BOARD'S RULES OF PROCEDURE). THESE MATTERS ARE EXPLAINED IN FORM 51 WHICH THE RESPONDENT RECEIVED ON APRIL 27, 1970. PARAGRAPH 8 OF THAT FORM PROVIDES:

> "8. IF YOU FAIL TO FILE A REPLY OR THE LIST OF EMPLOYEES AND DOCUMENTS CONTAINING SIGNATURES AS SET OUT ABOVE WITHIN THE TIME FIXED BY PARAGRAPH 5 OF THIS NOTICE OR IF YOU REPLY IS INCOMPLETE, THE BOARD MAY PROCEED TO DISPOSE OF THE APPLICATION ON THE EVIDENCE AND REPRESENTATIONS BEFORE IT WITHOUT FURTHER NOTICE TO YOU AND WITHOUT A HEARING."

THE RESPONDENT HAD AN AMPLE OPPORTUNITY TO FILE A REPLY AND WAS MADE FULLY AWARE OF THE CONSEQUENCES OF FAILING TO FILE A REPLY PRIOR TO THE TERMINAL DATE OF THIS APPLICATION. NO REPLY HAVING BEEN RECEIVED WITHIN THE TIME FIXED BY THE BOARD'S RULES OF PROCEDURE AND THERE BEING NO REQUEST FOR AN EXTENSION OF TIME, THE BOARD PROCEEDED TO DISPOSE OF THE APPLICATION ON THE BASIS OF THE EVIDENCE BEFORE IT ON MAY 1, 1970.

3. HAVING REGARD TO THE FOREGOING, THE REQUEST OF THE RESPONDENT TO RECONSIDER THE DECISION OF THE BOARD DATED MAY 1, 1970, IN ORDER TO ALLOW THE RESPONDENT TO FILE A REPLY IS HEREBY DENIED. THE BOARD HEREBY CONFIRMS ITS DECISION DATED MAY 1, 1970.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION - SECTION 65

16200-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. BRAYSHAWS STEEL LIMITED (RESPONDENT).

BEFORE: J. D. O'Shea, Q.C., Vice-Chairman, and Board Members O. Hodges and F. W. Murray.

DECISION OF THE BOARD: June 29, 1970.

1. On May 25, 1970, this matter was listed for continuation of hearing for Tuesday, July 7, 1970 for the purpose of hearing the evidence and representations of the parties concerning the amount to be paid to each of the aggrieved persons whom the Board directed the respondent to reinstate by its decision of April 23, 1970.

2. The respondent by letter dated June 19, 1970 requested an adjournment of the hearing scheduled for July 7, 1970 on the grounds that Shopmen's Local Union No. 743 of the International Association of Bridge, Structural and Ornamental Iron Workers had served notice on June 11, 1970 to quash the decision of the Board in the certification application involving the parties in this matter. It was the respondent's position that since the Board's decision reinstating the aggrieved persons in the instant case was based on the findings and decision of the Board in the certification application, the Court's decision might bear directly on the results of the complaint in this matter. The respondent accordingly requested the hearing scheduled for July 7, 1970 be adjourned pending the decision of the Court in the certiorari application. The complainant by letter dated June 26, 1970 has opposed the request for adjournment.

3. Having considered the representations of the parties, the Board denies the respondent's request. The Board is of opinion that the evidence concerning the amount to be paid to each of the aggrieved persons should be obtained without further delay while such evidence is still available and before the evidence becomes more clouded by the passage of time. The hearing on July 7, 1970 cannot prejudice the position of the parties in the proceedings before the Court whereas a delay may well prejudice the complainant and the aggrieved persons. Once the evidence has been obtained, however, it is the Board's present intention to reserve its decision on the amount to be paid to each of the aggrieved persons pending the decision of the Court in the certiorari application.

4. The hearing scheduled for Tuesday, July 7, 1970 will proceed in accordance with the notice of hearing served in this matter.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

17832-70-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 124 (APPLICANT) v. CARLETON FORMWORK LIMITED (RESPONDENT).

2. THE APPLICANT FILED TWO CERTIFICATES OF MEMBERSHIP. ONE OF THE CERTIFICATES IS SIGNED BY THE MEMBER AND INDICATES THAT MONTHLY DUES OF $10.00 HAVE BEEN PAID FOR AT LEAST ONE MONTH WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE CERTIFICATE IS CHECKED AND CERTIFIED CORRECT BY AN OFFICER OF THE APPLICANT. THE OTHER CERTIFICATE OF MEMBERSHIP DOES NOT BEAR THE MEMBER'S SIGNATURE IN THE PLACE DESIGNATED FOR IT. A SIGNATURE WHICH MAY BE THAT OF THE MEMBER IS WRITTEN IN THE PLACE DESIGNATED FOR THE SIGNATURE OF THE BUSINESS REPRESENTATIVE. THIS CERTIFICATE INDICATES THAT MONTHLY DUES OF $10.00 HAVE BEEN PAID FOR AT LEAST ONE MONTH WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION, BUT IS NOT CHECKED AND CERTIFIED CORRECT BY AN OFFICER OF THE APPLICANT. THE APPLICANT ALSO FILED ONE COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT. THE COMBINATION APPLICATION FOR MEMBERSHIP IS SIGNED BY THE EMPLOYEE AND THE RECEIPT IS COUNTER-SIGNED AND INDICATES THAT A PAYMENT OF AT LEAST $1.00 HAS BEEN MADE WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE MONEY WAS COLLECTED BY ONE PERSON. HOWEVER, THE COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT DOES NOT INDICATE WHICH TRADE UNION THE EMPLOYEE IS SEEKING TO JOIN. THE APPLICANT ALSO FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

7. HAVING REGARD TO THE NATURE OF THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 27, 1970, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN

WILL BE ELIGIBLE TO VOTE.

(JUNE 5TH, 1970).

17838-70-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. DULEPKA EQUIPMENT RENTALS LIMITED (RESPONDENT).

5. IN PARAGRAPH 8 OF ITS REPLY THE RESPONDENT HAS PROPOSED AS A UNIT APPROPRIATE FOR COLLECTIVE BARGAINING:

> ALL (SIX) EMPLOYEES WORKING IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, ENGAGED IN THE OPERATION OF CRANES.

THE APPLICANT SEEKS ITS REGULAR BARGAINING UNIT AS THE UNIT APPROPRIATE FOR COLLECTIVE BARGAINING. THE BOARD NOTES THAT THE RESPONDENT HAS STATED THAT IT DOES NOT CONTEST THIS CERTIFICATION AND THAT THE RESPONDENT HAS NOT REQUESTED A HEARING OF THIS APPLICATION. FIVE OF THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE DESCRIBED BY THE RESPONDENT AS "CRANE OPERATOR" AND THE SIXTH AS A "FRONT END MAN". IT IS THE PRACTICE OF THE BOARD TO GRANT TO THE APPLICANT THE BARGAINING UNIT IT IS SEEKING WHETHER OR NOT THERE ARE PRESENT EMPLOYEES WHO WOULD FALL INTO ALL OF THE CLASSIFICATIONS DESCRIBED IN THE BARGAINING UNIT, SEE THE ROBERTSON-IRWIN LIMITED CASE, OLRB MONTHLY REPORTS, DECEMBER 1969, P. 1097. SIMILARLY, IT IS NOT THE PRACTICE OF THE BOARD TO DEFINE A BARGAINING UNIT IN TERMS OF THE NUMBER OF EMPLOYEES PRESENTLY INCLUDED THEREIN, OR TO OMIT THE EXCLUSION OF "NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN" FROM THE DESCRIPTION OF THE BARGAINING UNIT IN THE CIRCUMSTANCES OF THIS APPLICATION. THE BOARD THEREFORE FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT WITHIN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(JUNE 3TH, 1970).

STATISTICAL TABLES - FISCAL YEAR 1970-71

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		Number Filed 1st 3 Months of Fiscal Year 1970-71	1969-70
I.	Certification	311	298
II.	Declaration Terminating Bargaining Rights	26	16
III.	Declaration of Successor Status	5	5
IV.	Declaration That Strike Unlawful	19	22
V.	Declaration That Lockout Unlawful	1	1
VI.	Consent to Prosecute	28	38
VII.	Complaint of Unfair Practice in Employment (Section 65)	47	39
VIII.	Miscellaneous	23	22
	TOTAL	460	441

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	Number 1st 3 Months of Fiscal Year 1970-71	1969-70
Hearings and Continuation of Hearings by the Board	318	332

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY MAJOR TYPES

		Number Disposed of 1st 3 Months of Fiscal Yr. 1970-71	1969-70
I.	Certification	334	275
II.	Declaration Terminating Bargaining Rights	25	13
III.	Declaration of Successor Status	5	17
IV.	Declaration That Strike Unlawful	18	20
V.	Declaration That Lock-out Unlawful	1	1
VI.	Consent to Prosecute	31	40
VII.	Complaint of Unfair Practice in Employment (Section 65)	45	44
VIII.	Miscellaneous	25	33
	TOTAL	484	443

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

		Number of Applications 1st 3 Months Fiscal Yr.		Number of Employees* 1st 3 Months Fiscal Yr.	
		1970-71	1969-70	1970-71	1969-70
I.	Certification				
	Granted	236	185	7051	8187
	Dismissed	70	57	2012	1910
	Withdrawn	29	33	1241	565
	TOTAL	335	275	10304	10662
II.	Termination of Bargaining Rights				
	Granted	9	6	185	331
	Dismissed	12	7	1264	106
	Withdrawn	3	-	417	18
		24	13	1866	455

*These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at the time the applications for certification were filed with the Board. Totals for applications dismissed and withdrawn are approximate.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION (CONTINUED)

		Number of Applications 1st 3 Months Fiscal Yr. 1970-71	1969-70
III.	Declaration that Strike Unlawful		
	Granted	-	1
	Dismissed	-	5
	Withdrawn	18	14
	TOTAL	18	20
IV.	Declaration That Lock-out Unlawful		
	Granted	-	-
	Dismissed	1	-
	Withdrawn	-	1
	TOTAL	1	1
V.	Consent to Prosecute		
	Granted	7	15
	Dismissed	3	4
	Withdrawn	21	21
	TOTAL	31	40
VI.	Complaint of Unfair Practice in Employment (Section 65)		
	Granted	4	8
	Dismissed	11	7
	Withdrawn	29	29
	TOTAL	44	44

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

	Number of Votes 1st 3 Mths 1970-71	Fiscal Yr. 1969-70
Certification after Vote*		
Pre-Hearing Vote	4	10
Post-Hearing Vote	11	4
Ballots Not Counted	-	-
Dismissed After Vote		
Pre-Hearing Vote	6	3
Post-Hearing Vote	21	13
Ballots Not Counted	3	-
TOTAL	45	30

*Includes applicant-intervener application in which both applicant and intervener apply for a new unit and either applicant or intervener is certified.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

	Number of Votes 1st 3 Mths 1970-71	Fiscal Yr. 1969-70
*Respondent Union Successful	-	-
Respondent Union Unsuccessful	7	3
TOTAL	7	3

*In termination proceedings where a vote is taken the applicant is a group of employees or the employer; the incumbent union is thus the respondent.

BINDING SECT. APR 7 1972